TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 114

EXCHANGE TRUST COMPANY, EXECUTOR OF THE ESTATE OF ROY RICE, DECEASED, PLAINTIFF IN ERROR,

vs.

DRAINAGE DISTRICT NO. 7, POINSETT COUNTY, ARKANSAS, AND ITS COMMISSIONERS AND THE ST. FRANCIS LEVEE DISTRICT AND ITS BOARD OF DIRECTORS

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

FILED APRIL 11, 1928

(33,381)

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IN SUPREME COURT OF ARKANSAS

#257

Drainage District Number Seven, Poinsett County, Arkansas, and Board of Directors for the St. Francis Levee District, et al., Appellants,

vs.

Exchange Trust Company, as Executor of the Estate of Roy Rice, Deceased, Appellee

Stipulation re Transcript of Record

By stipulation of all parties hereto, through their attorneys of record herein the record of this case on appeal to the Supreme Court of the United States is fixed and designated as follows, this designation to be in lieu of praecipe by the several parties.

Copy the pleadings, pages 1 to 26 of this transcript, in full.

Omitting caption appearing on page 27, stipulation should be copied to and including page 29.

Copy on page 30 to second paragraph of description of lands and follow the first paragraph of the description by the following: "(Here follows description of other lands not involved in this litigation.)"

Beginning with the last paragraph on page 30, copy to the list of names on page 31, adding the following, at that point: "(Here follows list of names and description of property owned by each and including Roy Rice, the original plaintiff herein and all the other parties whose rights are to be determined by this suit under the stipulation.)"

Copy page 35.

In place of formal caption of order appearing on page 36 state: "In County Court Record "H", Poinsett County, Arkansas, appears order made and entered at the January term of said Court on Tuesday, January 25th, 1918. Said order states in part." Here copy the first three paragraphs of order down to the notice and state:

[fol. 2] "Here follows form of notice to be signed by Clerk and published pursuant to this order of Court. This notice contains descriptions of the lands including that in the case at bar."

Copy last paragraph of order on page 37.

Copy page 38.

In place of formal caption and first paragraph of order on page 39 state:

"There appears in County Court Record "H" pp. 385 to 389 inclusive, an order of that Court made and entered on February 25, 1918, a regular adjourned day of the Court confirming with certain exceptions not named and not affecting this litigation, the assessments made and filed on January 17, 1918. The order is in part, as follows:

Copy first three paragraphs p. 39.

Omit thereafter the last paragraph on page 39, continuing the omission on page 40 to the words, "And the Court, after hearing the oral evidence, etc."

Copy from that point to the end of the order.

Copy page 43.

Copy page 44 down to and including the description of Township 12 7. Add thereafter, "(Here follows description of other lands not directly affected by this case.)"

Omit the last two paragraphs on page 44, continuing the omission on page 45 to the paragraph beginning, "And the Court further finds, etc." Copy from that point to the end of the order.

Copy page 46.

Copy order beginning on page 47 down to and including the description of Township 12 7. Add thereafter, "(Here follows description of other lands added to the District, but not directly concerned in this litigation.)"

Omit last two paragraphs on page 47 and continue the omission through first three paragraphs on page 48 down to number two. Copy rest of the order.

Thereafter include the substance of the order of June 23, 1919 brought into the transcript by amendment under Rule 24, state, "The following order appears in County Court Record "H", pp. 511-516."

[fol. 3] Omit caption and copy to middle paragraph on page 7 of supplementary transcript. Omit thence to bot-

tom of page 7. "(Here follows judgment modifying certain assessments upon the objections of the various parties designated above.)"

Beginning at the top of page 8, copy to the "Change of Laterals," and make the statement as follows, at that point: "(Here is set out detailed changes in various laterals.)"

Omit to second paragraph from bottom page 9 and beginning to copy said paragraph beginning, "It is therefore considered, etc.," copy to the paragraph on page 10, beginning "The following lands in Township 11, North, etc." and place at that point the statement, "(Here follows description of various other lands not directly affected by this litigation.)"

Omit to second paragraph on page 11 beginning, "The Court further finds, etc.," and copy from that point to the end of the order.

Omit page 51, and in lieu thereof, state, "At a regular adjourned day of the County Court for Poinsett County, held on June 28, 1919, appearing in County Court record "H," p. 521, and being entered nunc pro tunc appears judgment of said Court confirming certain modifications in assessment of change of plans. Said order is as follows: "Omitting caption, copy page 52," and add the following: "(Here follows description of lands not directly involved in this litigation.)"

Omit on page 53 to the third paragraph, beginning "And the Court finds, etc.," Copy from that point to the bottom of page 53.

Omit page 54.

Copy page 55 to the beginning of the description of lands, the second paragraph from the bottom of said page, and state at that point, "(Here follows description of lands not directly involved in this suit.)"

Beginning at the top of page 56, copy to the end of the order.

Copy page 57; in place of the first half of page 58, state, "In County Court Record "I," page 59 appears an order [fol 4] entered on February 16, 1921, a regular adjourned day of that Court, said order states: Copy page 58.

Copy page 59.

Copy all of pages 60 and 61.

Copy all of page 62, after which state: "(Here follows list of a large number of objectors.)"

Omit to second paragraph from bottom of page 63. Copy last two paragraphs.

Copy all of page 64.

Copy from top of page 65 to middle, stating: "(Here follows list of many persons and the attorneys representing them.)"

Omit thence to the bottom of page 65.

Omit from the top of page 66 to the paragraph beginning, "To the action of the Court, etc." Copy from that point to the paragraph ending, "The following exceptions," and state there, "(Here follows certain exceptions not affecting this suit, and ruling as to two several objectors.)"

Omit to the second paragraph at the top of page 67, and copy said paragraph to description of land, stating at that point, "(Here follows description of certain lands.)"

Omit to the last paragraph on page 67 and copy from that point to the end of the order on page 69.

Copy pages 70-72.

Omit page 73.

In place of exhibit shown in two sections on page 75, copy in full the Roy Rice entry. Then make the following statement:

"This exhibit shows a large number of entries, final certificates and patents to lands in Township 12 North, Range 7 East, involved in the controversy in addition to the specific tract involved, as follows:

1913—37 Entries.
1914— 2 "
1915— 5 "
1916— 7 "
1917— 1 "
1918— 0 "
1919— 3 "
1920— 0 "
1921— 2 "
1922— 1 "
1923— 7 "
1924— 1 "
1925— 1 "

[fol. 5] Final certificates were issued as follows:

On February 11, 1919	1
On February 14, 1919	27
On February 19, 1919	1
In April, 1919	5
Later in 1919	2
In 1920	8
In 1921	8
On March 16, 1922	1
In 1923	2
In 1924	1
In 1925	3

This exhibit shows patents issued as follows:

April 2, 1919	1
June 3, 1919	22
Later in 1919	11
In 1920	11
In 1921	4
All as early as March, 1922	5
In 1923	2
In 1924	1
In 1925	0

Copy pages 76 to 83 inclusive.

Omit the caption of the case at the top of page 84 but begin copying the stipulation and copy consecutively to the bottom of page 93. State at that point: "(Here follows descriptions of many tracts of land, including that directly in controversy in this litigation.)"

Omit to the third paragraph on page 95, beginning, "The same being all the land, etc.," and copy thence to the bottom of page 96.

Omitting caption of case at top of page 97, copy consecutively to the bottom of page 99.

Copy pages 100, 101.

Omit at the top of page 102, the detailed tabulation of bonds and state: "(Here appears detailed tabulation of bonds with amounts of principal and interest maturing each year for the years 1918 to 1942, inclusive.)"

Copy beginning paragraph "E" on page 102, to end of order.

Copy pages 104, to tabulation of bonds on page 106.

Omit that tabulation and state: "(Here appears tabulation of this bond issue, showing amounts of principal due each year from August 1, 1929, to August 1, 1949, both inclusive.)"

Copy to end of order.

On page 108 copy to tabulation of bond issues, omitting [fol. 6] that tabulation and stating: "(Here appears tabulation of bonds, showing principal and interest payments each year, for the years 1918 to 1942, both inclusive.)"

Copy the last paragraph on p. 108, omitting the tabulation of bonds on page 109, and stating: "(Here appears tabulation of bonds, with principal payments each year for the years 1929 to 1949, both inclusive.)"

Copy last paragraph on page 109.

Omit tabulation of bonds, beginning with page 110, and extending over on page 111 and state: "(Here appears tabulation of bonds showing installments of principal due August 1, each year, for the years 1929 to 1949, both inclusive.)"

Copy paragraph in middle of page 111, beginning, "The County Court Record "1," etc.," to tabulation of bonds, following that paragraph.

Omit this tabulation and state: "(Here appears tabulation showing payments on August 4 of each year, for the years 1929 to 1943, both inclusive.)"

Copy paragraph in middle page 112, beginning, "County Court Record "1," etc., to tabulation of bonds, following that paragraph.

Omit this tabulation and state: "(Here follows tabulation of bonds, showing payments on August 1st, of each year, beginning 1934 to 1949, both inclusive.)"

Copy beginning with the statement at the bottom of page 112, "The total assessed benefits, etc.," to the end of order on page 113.

Copy pages 114, 115 and 116.

Omit pages 117-119, and state in place thereof, as follows, "In Chancery Court Record "F," page 589 appears decree in favor of said Drainage District Number 7 of Poinsett County, showing that the lands in litigation were

duly assessed, taxed, certified as delinquent and foreclosed for non-payment of the installment due in 1921 in similar [fol. 7] form to the decree for the 1920 installment copied above."

Copy page 120.

Omit pages 121-124 to the last paragraph. State in place thereof, as follows: "In Chancery Court Record "G" at page 97 appears decree in favor of said Drainage District No. 7 of Poinsett County, showing that the lands in litigation were duly assessed, certified as delinquent and foreclosed for non payment of the installment due in 1922, in similar form to the decree for 1920 installment copied above."

Copy the last paragraph on page 124.

Omit beginning p. 125, to the last paragraph on p. 127, and state in place thereof, as follows: "In Chancery Court Record "G" at p. 397 et seq. appears decree in favor of said Drainage District No. 7 of Poinsett County, showing that the lands in litigation were duly assessed, taxed and certified as delinquent for non payment of the installments due in 1923, in similar form to the decree for installment of 1920, copied above."

Copy the last paragraph on page 127.

Omit beginning page 128 to the last paragraph on p. 131, and state in place thereof: "In Chancery Court Record "H," page 252, et seq., appears decree in favor of the said Drainage District No. 7 of Poinsett County showing that the lands in litigation were duly assessed, taxed, certified as delinquent, and foreclosed for nonpayment of the installment due in 1924, in similar form to foregoing decrees for other years."

Copy the last paragraph on p. 131.

Omit beginning at top of page 132 to the paragraph beginning, "This cause came on to be heard, etc.," and state in place thereof, as follows: "In Deed Record 10, page 201, in the office of the Circuit Clerk and Ex Officio Recorder for Poinsett County, at Harrisburg, Arkansas, appears decree duly made and entered on May 7, 1918, in the United States District Court, for the Jonesboro Division of the Eastern District of Arkansas, in that cause wherein the United States of America was plaintiff and H. [fol. 8] Blumenthal et al. were defendants."

Copy to the beginning of descriptions of land on page 132, omitting said descriptions to that paragraph on page 133 beginning: "That the defendants, their agents, etc.," and state in place thereof, as follows: "(Here follows description of various tracts of land, including that in litigation.)"

Then copy to bottom of page 135.

Omit depositions beginning p. 136, and continue to page 151.

Copy last paragraph on page 151 beginning: "It is stipulated etc."

[fol. 9] Copy pages 152, to 169, both inclusive.

Omit pages 170 to 183 both inclusive, and state in place thereof, as follows: "The lands in litigation were duly assessed, taxed, became delinquent and were foreclosed by the Chancery Court of Poinsett County, Arkansas in decrees rendered in favor of said St. Francis Levee District, each and every year beginning 1921, to and including 1925, said decrees being of record as follows:

"1. For the year 1921 entered, February 16, 1923, in Chancery Record "6", page 383.

2. For the year 1922, decree entered December 3, 1923 in Chancery Record, "6" page 389.

3. For the year 1923, decree entered May 5, 1924, and being of record in Chancery Record "H," page 33.

4. For the year 1924, decree entered July 27, 1926, and being of record, in Chancery Record "I," page 38.

5. For the year 1925, decree entered July 27, 1926 and being of record in Chancery Record "I," page 50."

Omit pages 184 to first paragraph in body of order, on page 189, and state: "Roy Rice, the original plaintiff in the principal case having died, while same was pending, proceedings for revivor in the name of his executor were duly had and order reviving said cause was made as follows: "(Here copy beginning "On this day etc.," to end of order on page 189.)"

On page 190 omit caption, stating, "The trial Court at a regular adjourned day in February, 1927, pursuant to petition of plaintiff, entered order as follows: "Copy there

after pages 190, 191 and 192 omitting likewise the caption of the case appearing on page 192.)

Beginning on page 193, copy to page 200, inclusive.

Copy petition for rehearing and order of the Court thereon.

[fol. 10] [Caption omitted]

[fol. 11] In Chancery Court of Poinsett County

In Equity. No. 2592

Roy Rice, Plaintiff,

vs.

Drainage District Number Seven, Poinsett County, Arkansas, and Marshall Gravette, Curtis Dewey, N. T. Whittaker, Sam Monday, and S. P. Thompson, as Commissioners of said Drainage District, and St. Francis Levee District, Defendants

Complaint. Filed Dec. 12, 1925

1

Comes plaintiff, Roy Rice, and for his cause of action against defendants herein, states as follows:

2

That defendant, Drainage District #7, Poinsett county, is an improvement district, with power to sue and be sued, organized and existing under and by virtue of Act #193 of the General Assembly of the State of Arkansas, enacted at its regular session in 1917, that the said Marshall Gravette, Curtis Dewey, N. T. Whittaker, Sam Monday and S. P. Thompson are the duly qualified, authorized and acting commissioners of said Drainage District No. 7, Poinsett county, Arkansas.

[fol. 12] 3

Defendant, St. Francis Lee District is an Improvement District organized and existing under and by virtue of Act

No. — of the Acts of 1893 of the General Assembly of the State of Arkansas and acts amendatory and supplementary thereto with power to sue and be sued.

4

That defendant has legal title to certain lands in Poinsett county, Arkansas, described as follows, to wit: Lots 2 and 3 and the south half of the Northwest quarter (S. ½ of N. W. ¼) of Section 12, Township 12 North, Range Seven East, containing 158.09 acres.

5

That the United States Government obtained title to all of said described lands through a grant generally known as the Louisiana Purchase.

6

That patent issued by the United States Government on June 3, 1919 conveying all of the lands above described from the United States Government to this plaintiff.

7

That plans for the improvement were duly made, filed and approved on or about January 17, 1918 as appears in County Court Record "H" page — et seq., in the office of the County Clerk at Harrisburg, Arkansas; that thereafter and on or about March 11th, 1918 and while title in and to all of said lands was still in the United States Government, said County Court of Poinsett county undertook and attempted to make an order including the above described lands within said improvement district providing in that order that there be levied against the lands so annexed, assessments for the construction of said improvement under [fol. 13] the identical plans made, filed and approved as aforesaid.

8

That thereafter and while the title to said lands remained in the United States Government, said defendant Drainage District #7 undertook and attempted to make an assessment of benefits against the above described lands for the

construction of said improvement and did make a levy of taxes on the basis of said assessment of benefits; the title in and to said lands at all times being in the United States Government.

9

That the said Drainage District #7 certified said lands as delinquent for non-payment of taxes for the years 1920, 1921 and 1922. That said certificates of delinquency were for taxes levied as aforesaid on the basis of the improvement as originally planned and designed. That pursuant to said attempted assessment and certificate of delinquency, decree of foreclosure was taken in the Chancery Court for Poinsett county, Arkansas, condemning said lands to be sold, said decree appearing of record in Chancery Record "G" page 97 in the office of the Circuit Clerk at Harrisburg, Arkansas. That on or about December 3, 1923 the Clerk of the Chancery Court for Poinsett county as Commissioner, executed to defendant Drainage District #7 deed pursuant to foreclosure of the alleged tax liens for said years, such deed being of record in Deed Record 15, page 501 in the office of the Circuit Clerk at Harrisburg, Arkansas.

10

That said defendant Drainage District #7 under and by [fol. 14] virtue of the attempted assessment and levy of taxes as aforesaid has certified the above described lands as delinquent for the non-payment of such taxes for the years 1923, 1924 and 1925. That said lands were condemned to be sold for taxes of 1923 by the Chancery Court Decree, of record in Chancery Record "G" page 397 in the office of the Chancery Court Clerk for Poinsett County at Harrisburg, Arkansas. Commissioner's Deed in favor of said defendant Drainage District #7 was executed pursuant to said decree, same being of record in Deed Record 18, page 90 in the office of the Circuit Clerk at Harrisburg, Arkansas. Decree was further made and entered by said Chancery Court of Poinsett county condemning said lands to be sold for non-payment of alleged taxes of said Drainage District #7 for the year 1924, same being of record in Chancery Record "H" page 252 in the office of the Circuit Clerk at Harrisburg, Arkansas and commissioner's deed in favor of

said defendant district made pursuant to said decree appears in Record 20 at page 57 in the office of the Circuit Clerk at Harrisburg, Arkansas. That said described lands have all been certified as delinquent for the non-payment of taxes in said drainage District #7 for the year 1925, though not yet foreclosed.

11

That at the time of the attempted assessment of benefits and levy of taxes pursuant thereto, title in and to all of said described lands remained in the United States Government.

12

That said attempted assessment or assessments of benefits and levy or levies of taxes pursuant thereto and cer- [fol. 15] tificates of delinquencies for the non-payment of any of said taxes and the attempted decrees of foreclosure of alleged liens for the non-payment of same, and each and all of the purported deeds undertaking and attempting to convey title to said lands under each and all of said foreclosures for the years 1920, 1921, 1922, 1923, 1924 and 1925, are each and all of same for the said several years void and of no effect and made and done without any legal right, power or authority. That each and all of said attempted assessments, levies, decrees, certificates, deeds and all acts incidental or supplementary thereto are void because they are an attempt to attach a lien and levy a tax on lands of the United States and the property of the United States is exempt by the Constitution from taxation under the authority of the State, so long as title remains in the United States Government. That therefore, each and all of said attempted assessments, levies, decrees, certificates and deeds above described and set forth and all acts incidental and supplementary thereto shall be canceled, set aside and held for naught as a cloud upon the title to said lands.

13

That through error and under the threat of foreclosure for failure to make such payment, payment of the taxes attempted to be assessed on certain of the lands above de-

scribed, was made for the years —, — and — in the sum of $—, all of which plaintiff is entitled to recover for the reasons above set forth.

[fol. 16] 14

Plaintiff further states that in an abortive effort to clothe the above illegal and unauthorized acts of said Drainage District #7 with legality and authority, various curative acts were, at the several sessions of the Legislature, since the establishment of said district, enacted. That same are wholly unconstitutional and void and should be so declared by this court.

15

That the said acts of said Drainage District #7 as aforesaid in attempting to exact assessments of benefits by a tax against the said described property, is in violation of the Fourteenth Amendment to the Constitution of the United States, in that it is an attempt to take property without due process of law.

16

Plaintiff further states that said defendant Drainage District #7 is undertaking and attempting to make further unauthorized and illegal assessments of benefits, levies and taxes and to foreclose the alleged liens of such illegal assessments; that irreparable damage will result to plaintiff on that account and that he is entitled to an injunction as against said defendant Drainage District #7 enjoining it and restraining it from so doing.

17

Plaintiff further states that the improvement and enterprise for which said defendant St. Francis Levee District [fol. 17] was organized was constructed and perfected and existed as a completed improvement while all of the lands above described were owned by the United States Government. That notwithstanding said fact, said defendant St. Francis Levee District has attempted and undertaken after passing of title in and to said lands to private individuals, to assess and levy taxes on said described lands for the

years 1920, 1921, 1922, 1923, 1924 and 1925, and will continue to attempt to levy such tax unless restrained and enjoined from so doing. That plaintiff is entitled to have all previous alleged liens of taxes by said defendant canceled and held for naught and to have said defendant Levee District restrained and enjoined from any further assessment. That there has been paid to said St. Francis Levee District taxes which it attempted to levy as aforesaid, for the years 1920 to 1924 inclusive in the amount of $—, all of which plaintiff is entitled to recover.

18

That all of said acts of said St. Francis Levee District are in violation of the Fourteenth Amendment to the Constitution of the United States in that they take property without due process of law.

19

Wherefore plaintiff prays that each and all of the attempted assessments, levies or taxes pursuant thereto, decrees of foreclosure for the non payment of any and all of such tax levies, and deeds of conveyances undertaking to convey any or all of said described lands to said defendant for such non-payment be canceled, set aside and held for [fol. 18] naught and the title to said land be confirmed and quieted, free and clear of any lien because of any such attempted assessments, levies of taxes, of foreclosures and deeds of conveyances on behalf of said Drainage District #7, Poinsett County. That said defendant district be enjoined and restrained permanently from hereafter assessing, attempting to assess or levy any tax on any or either of said described tracts of land for or on behalf of said Drainage District #7. That plaintiff recover from Drainage District #7 the sum of $—, erroneously paid to it under its attempted unauthorized levy of taxes as aforesaid. That any and all attempted assessment and levy of tax on behalf of defendant St. Francis Levee District be canceled and held for naught and set aside as a cloud upon the title of the above described lands. That the said St. Francis Levee District be permanently enjoined and restrained from hereafter assessing, attempting to assess or levy taxes upon said described lands or any part of same.

That plaintiff further have and recover of and from said defendant St. Francis Levee District $— heretofore collected by it without right under the attempted assessments for the years 1920 to 1924 inclusive. That plaintiff have all his costs and all other and general relief to which he may be entitled.

Cooley, Adams & Fuhr, Attorneys for Plaintiff.

[File endorsement omitted.]

Appearance of defendants entered December 15, 1925.

[fol. 19] In Chancery Court of Poinsett County

[Title omitted]

Amendment to Complaint—Filed Oct. 25, 1926

Comes the plaintiff Roy Rice and re-alleging each and all of the statements and allegations of the original complaint herein filed, files this as his amendment to the same and particularly as his amendment to paragraphs 8, 14, 17 and 18 of the said complaint as originally filed and states further by way of amendment:

That Drainage District Number 7 of Poinsett county, Arkansas did by State statute of the State of Arkansas through enactment by the Legislature of the said State, while title in and to the lands described and set out in the original complaint was in the United States, undertake and attempt to subject said lands to the liens of assessments for the construction of a public improvement under the laws of said State; in that it did by enactment of the Act No. 35, p. 52 Special Acts of Arkansas of 1919, adopted February 3, 1919, validate and confirm the annexation of said lands to Drainage District No. 7 Poinsett County, Arkansas, declaring the same benefited thereby and bound to pay pro rata therefor. That said statute and legislative enactment is unconstitutional and void because contrary to [fol. 20] and violation of the laws and Constitution of the United States. That it is repugnant to Article 1, Section 8,

Paragraph 1, of the Constitution of the United States, especially authorizing the Congress of the United States to lay and levy taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.

That it is further repugnant to Article 1, Section 8, Paragraph 16 of the Constitution of the United States especially and exclusively authorizing Congress of the United States to exercise exclusive jurisdiction over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of * * * needful buildings, etc.; that it is repugnant to Article 4, Section 3, Paragraph 2 of the Constitution of the United States, especially and exclusively authorizing Congress of the United States to dispose of and make needful rules and regulations respecting the territory or other property belonging to the United States; that it is repugnant to Article 6, Paragraph 2 of the Constitution of the United States, providing that the constitution and laws of the United States shall be made in pursuance thereof, shall be the supreme law of the land and the judges in each State shall be bound thereby, nothing in the constitution or laws of any State notwithstanding; that it is repugnant to the Fourteenth Amendment to the Constitution of the United States, providing that no State shall make or enforce any law which should abridge the privileges or immunity of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction, the equal protection of [fol. 21] the laws. The plaintiff is and was at all times alleged in the complaint as amended a citizen of the United States.

Plaintiff further states that defendant Drainage District Number 7 of Poinsett county, Arkansas, did procure the enactment of a statute in the Legislature of the State of Arkansas, undertaking to validate and confirm a re-assessment of benefits on the lands herein in controversy. Such re-assessment relates back to and is based on the inclusion of certain lands within the said improvement district with the declared purpose of taxing the same, and their assessment, all for payment for the construction of such improve-

ment and while said lands were the property of the United States. That for this reason said Act, which is Act No. 567, p. 1638, of the Special Acts of Arkansas of 1923, is unconstitutional and void as attempting to tax lands of the United States being therefore in conflict with the laws of the United States. That the statute above last described is further unconstitutional and void and in conflict with the laws of the United States, in that it fails by its terms and provisions to provide for any notice to, or hearing on behalf of the owners of land affected among which is the land here in controversy.

That it is repugnant to Article I, Section 8, Paragraph 1, of the Constitution of the United States, especially and exclusively authorizing the Congress of the United States to lay and levy taxes, duties, imposts, and excises, to pay the debts and provide for the common defenses and general welfare of the United States; that it is further repugnant to Article I, Section 8, Paragraph 16 of the Constitution [fol. 22] of the United States, especially and exclusively authorizing Congress of the United States to exercise exclusive jurisdiction over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection * * * needful buildings, etc.; that it is repugnant to Article 4, Section 3, Paragraph 2 of the Constitution of the United States, especially and exclusively authorizing Congress of the United States to dispose of and make needful rules and regulations respecting the territory or other property belonging to the United States; that it is repugnant to Article 6, Paragraph 2 of the Constitution of the United States, providing that the constitution and laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land and the judges of every State shall be bound thereby, nothing in the Constitution or laws of any State notwithstanding; that it is repugnant to the Fourteenth Amendment to the Constitution of the United States, providing that no State shall make or enforce any law which would abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any per-

son within its jurisdiction the equal protection of the laws. The plaintiff is and was at all times alleged in the complaint as amended a citizen of the United States.

Wherefore plaintiff prays that he be granted all relief as against all the defendants herein as asked in the orig- [fol. 23] inal complaint; that he have judgment for costs and for all other and general relief.

Cooley, Adams & Fuhr, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 24] In Chancery Court of Poinsett County

[Title omitted]

Separate Answer of Drainage District No. 7 of Poinsett County and Its Directors—Filed Jan. 5, 1926

Defendant, Drainage District No. 7, and its directors admit that said District is an improvement District created by Special Act of the General Assembly and that the persons named are its directors.

They deny that the plaintiff above named has the legal title to the lands described in his complaint.

It admits that the United States Government once owned said lands and that on June 3, 1919 it patented said lands to plaintiff, but alleges that long prior to said June 3, 1919 plaintiff was entitled to his patent and had the equitable title to said lands and the said lands were taxable as early as January, 1918.

Defendants deny that plans for any improvement affecting any lands in Township 12 North, Range 7 East, were filed as early as January 17, 1918 and allege that said lands were not annexed to said drainage district, nor any attempt [fol. 25] made to reclaim said lands until long after said date.

It admits that on March 15, 1918, upon the petition of more than a majority of the landowners, including plaintiff and his predecessors in title, the Poinsett county court annexed a large body of lands lying east of the St. Francis River to the boundaries of the district, as described in the Special Act creating it.

It denies, however, that the title to these lands was in the United States Government on said date, but alleges that the plaintiff, and those under whom he claims, held the equitable title and were entitled to a patent at said time, and that they petitioned for such annexation.

It denies that any taxes or special assessments were levied under the identical plans made on January 17, 1918 or any other plans as early as March 15, 1918 or until long thereafter.

Defendants deny that at any time while the title to said lands remained in the United States Government, this Drainage District undertook to assess said lands or to make a levy of taxes upon any assessment of benefits against the same.

It admits that pursuant to law and after delinquency it has regularly taken decrees of foreclosure against all delinquent lands including the lands described in the complaint, and alleges that such decrees were rendered by the Poinsett Chancery Court, the Court having complete jurisdiction of the subject matter and upon proper service, as recited in said decrees, and that no attack was made upon the assessment nor any defense in said foreclosure causes by the plaintiff nor those under whom he claims.

[fol. 26] Defendants further say that this proceedings is a collateral attack upon the said decrees of foreclosure, which decrees were rendered upon proper service by a court of record having general jurisdiction of the subject matters and jurisdiction of the parties, and hence the said foreclosure decrees are a complete bar to this suit and to any attack upon the assessment and plaintiff is estopped by each and every one of said decrees and particularly estopped from collaterally attacking the same, as attempted in this complaint.

And it again denies that at the time of the attempted assessment of benefits and levy of taxes pursuant thereto the title to any of said lands remained in the United States Government.

The defendants deny that either the assessment, levy of taxes, certificates of delinquency, or decrees of foreclosure or deeds thereunder are void for any of the years named, because they attempt to attach a lien and levy a tax on lands of the United States or for any other reason, and

deny that any of said proceedings do so attempt to tax lands of the United States.

They deny that any of the said proceedings constitute clouds upon the title to said lands of the plaintiff, but allege on the contrary that all said proceedings are valid and legal in all respects and that the plaintiff is barred thereby.

They deny that through error and under threat of foreclosure plaintiff paid any taxes on any lands, as alleged in the complaint, but state that if plaintiff did pay any taxes or special assessments he did so voluntarily and without protest. That the Collector of Revenue received such taxes not [fol. 27] knowing of any protest by plaintiff and in due course paid the same over to the defendant district, which applied the same upon bonds and coupons regularly issued and sold for the construction of its improvements and the reclamation of the said lands. Said monies have long ago passed out of the possession of the Collector and out of the possession of the Drainage District and having been paid voluntarily the plaintiff is not entitled to recover the same and is barred in regard to such payments.

It is true that at various later sessions of the General Assembly each and all of the proceedings, the assessments of benefits and the plans of the drainage district have been approved, established and confirmed and defendants deny that said Acts are unconstitutional and deny that they are void, either in violation of the Fourteenth Amendment to the United States Constitution or otherwise, but allege on the contrary that said Curative Acts constitute a complete bar to any attack by the plaintiff upon said assessments and the said Acts are so pleaded.

The said defendants further deny that the assessment of benefits violates the Fourteenth Amendment to the Constitution in attempting to take property without due process of law or for any other reason.

Defendants admit that all property and legal proceedings will be taken to enforce the assessment of benefits, and to collect the taxes levied against all the lands in the district. It denies that the plaintiff will be irreparably injured and alleges that whatever defense the plaintiff is entitled to make, he can make in said suits for foreclosure; hence plaintiff is not entitled to an injunction and this Court is without [fol. 28] jurisdiction to demand one herein.

Defendants allege that there is no connection between the Drainage District and the St. Francis Levee District, but upon information and belief it does allege that the St. Francis Levee District, by the building of its levees along the Mississippi River has made possible the farming of the lands of plaintiff, which otherwise would be swamped and overflowed and alleges that the plaintiff and all other land owners in said district have for years voluntarily paid the assessments levied by the St. Francis Levee District without protest, realizing that the value of their land depended upon the levees of that district.

Further answering defendants say: The original plans for the improvement of said drainage district, as filed in January, 1918 or thereabouts, did not contemplate any ditches nor levees east of the west bank of the St. Francis River. It was intended to construct a levee along the west bank of the St. Francis River and west of said levee to install an elaborate system of ditches, but no attempt was made to reclaim any lands east of the St. Francis River nor to reclaim the lands in this suit.

However, after the establishment of said district and the approval of said plans, the plaintiff, or those under whom he claims, and his neighbors in Township 12 North, Range 7 East, and elsewhere east of the St. Francis River, applied to the directors of the drainage district for leave to add their lands to the territory of the district and for the reclaiming of said lands. Said lands were then wet and [fol. 29] overflowed and on account of the anticipated improvements in Drainage District No. 17 of Mississippi County, were going to be still further damaged by water. A considerable portion of said lands, as defendants are advised, were entered under the Timber and Stone Act wherein the entryman himself made affidavit that the same were wet and unfit for cultivation. The owners of all said lands represented that they would be ruined by overflow unless they could be added to Drainage District No. 7 and reclaimed by its improvements.

The said Drainage District No. 7 consented to the annexation of said lands and to improving the same upon the following conditions, practically all of which have since been violated:

First. That the landowners should present their petition to the County Court having more than a majority and should obtain an order of the County Court annexing said territory to said Drainage District No. 7 and expressing their consent thereto and to the taxation of their lands. The Drainage District only undertook not to oppose this annexation and took no steps to bring it about.

Second. The improvement of the lands east of the St. Francis River was not to increase the total cost to the land owners west of the St. Francis River.

Third. Such annexation and improvement was not to delay the work west of the St. Francis River nor to cause litigation concerning the district.

The landowners, including plaintiff, and his neighbors, accepted these conditions, filed petition with much more [fol. 20] than a majority in the County Court, and on March 19, 1918 the County Court annexed said territory without any action upon the part of Drainage District 7 except that said district consented to the annexation in open Court.

The said annexation was confirmed by Special Act of the General Assembly in 1919. Thereafter the Drainage District did file plans for the improvement of said territory in Township 12 North, Range 7 East, and other localities east of the St. Francis River. A very elaborate system of flood ways, ditches, levees, culverts, dams and spillways was designed for the lands of the plaintiff and other lands in that vicinity. The assessment of benefits was fixed and established after a full hearing at which plaintiff and many of his neighbors appeared, and at which they agreed to their assessments. In many instances the landowners asked for changes in the line of ditches and for extensions of laterals and other modifications of the plans to better suit their individual needs.

The said landowners, including the plaintiff, well knew that the improvements were planned, they consented to said assessment without contest and stood by while the district sold bonds upon the faith of said assessment of benefits and expended over $2,000,000 in attempting the reclamation of the lands east of the said St. Francis River. At a later date, to wit: June 1, 1922, after the filing of a complete report showing revised plans for all the improvements of said

district, including those east of the St. Francis River, another full and complete hearing was had in the County Court of Poinsett County. At said hearing plaintiff ap- [fol. 31] peared among others to be heard upon the re-assessment of benefits based upon said complete modification of plans. The County Court approved the modified plans and approved a complete re-assessment of the benefits of said district. Said judgment was later confirmed and cured by Special Act of the General Assembly of Arkansas, at the session of 1923. Plaintiff did not appeal from the judgment of the County Court, but acquiesced therein. The said complete modification of plans in effect was the creation of a new drainage district and the fixing of a new assessment and this occurred more than three years after the date of the alleged patent from the United States Government to the plaintiff herein.

The said modified plans and modified and revised assessment of benefits, as established by the order of the County Court and by the Curative Act aforesaid, constitute a full and complete bar to the plaintiff's suit and estop and foreclose any attack upon the assessment of benefits as fixed on June 1, 1922.

For all of said reasons the complaint should be dismissed for want of equity.

Wherefore, having fully answered, defendants pray that the complaint be dismissed for want of equity and that the various proceedings be confirmed, and for costs and all other proper relief.

Chas. D. Frierson, Solicitor for Drainage District No. 7, Poinsett County.

[File endorsement omitted.]

[fol. 32] In Chancery Court of Poinsett County

[Title omitted]

Separate Answer of the Board of Directors St. Francis Levee District—Filed Sept. 18, 1926

The defendant, Board of Directors of the St. Francis Levee District, for its separate answer to the complaint filed herein, states:

It admits that the defendant, St. Francis Levee District is an improvement district organized and existing under and by virtue of Act — of the Acts of 1893 of the General Assembly of the State of Arkansas, and Acts amendatory and supplemental thereto, with power to sue and be sued.

Defendant states that it is not advised as to the title to the land set forth in the complaint, and therefore, neither affirms nor denies that the land mentioned in Paragraph Four (4) of the complaint, belonged to the plaintiff in this action. Defendant admits that the United States Government obtained title to said lands, as set forth in the complaint; that this defendant denies that said land was patented by the United States Government to private individuals, at the time and in the manner set forth in the complaint.

Defendant states that Paragraph 7 of the complaint does not specify what improvement are referred to, and for that [fol. 33] reason this defendant denies that plats for the improvement were duly made, filed and perfected on or about January 17, 1918, and denies that on or about March 15, 1918, the County Court of Poinsett County made an order including the lands described in the complaint within the boundaries of said District, as set forth in Paragraph 7 of said complaint.

Defendant denies that the improvement and enterprize for which this defendant was organized was constructed, perfected or existed as a completed improvement while all of the lands described in the complaint were owned by the United States Government. Defendant admits that it has assessed and levied taxes on the lands mentioned in the complaint for the years mentioned therein, and admits that it will continue to do so, and states that it has a right to do so for the reasons hereinafter set forth. Defendant denies that there has been paid to this defendant any taxes whatever on said lands for the years 1920 to 1924, inclusive, and denies that plaintiff is entitled to recover any taxes so paid.

Defendant denies that any of its said acts are in violation of the Fourteenth Amendment to the Constitution of the United States, as set forth in the complaint.

And for further answer to the complaint filed herein, this defendant states the facts to be as follows:

That long prior to the issuance of the patents from the United States Government to private individuals, as set forth in the complaint, said lands had been entered by private individuals and were subject to patent; and the failure to receive patents prior to the year 1919 was due to the [fol. 34] neglect and delay on the part of the entrymen under their certificates, and that the equitable title to said land was in the holders of such certificates, and such lands were subject to taxes levied by this defendant from the date of such certificates.

That all taxes levied and assessed against said lands, which have been paid by the plaintiff and his predecessors in title, were paid voluntarily without compulsion and with full knowledge of all the facts, and for that reason said payments cannot now be recovered. That the defendant, St. Francis Levee District, was created and organized by Act No. of the Acts of 1893 of the General Assembly of the State of Arkansas; that said District includes the area of approximately 1,000,000 acres. That the original plans and specifications for the construction of the levee on the West bank of the Mississippi River were adopted in 1896; said original plans calling for a levee to contain 8,050,377 cubic yards at a cost of $1,209,697. That under such original plan the assessed benefit was $2.00 per acre and the rate levied for levee purposes was two per cent of the betterments, which produced an annual revenue of four cents per acre per year.

That the financial resources, population and development of the lands within the District were controlling in the adoption of such original plans; and that since said plans were adopted those factors have increased from year to year, and necessitated an almost continuous change of plans and specifications to provide increased security. That such original plans were designed to restrain medium floods.

That at the time of the organization of the defendant [fol. 35] District, practically all the lands within the District, including the lands mentioned in the complaint, were undeveloped and worthless because of the lack of levee protection.

That since the adoption of such original plans, as herein set forth, this defendant, in order to carry out the objects for which it was designed, has been compelled at frequent

intervals to adopt successive, additional and new plans for construction at increased costs. That the following factors have, since the original plans were adopted, brought about a complete change in the plans of said district, to wit:

1. Financial resources.
2. Population.
3. Development, agricultural and commercial.
4. Values, lands and personal property.
5. Confinement or restriction of floods.
6. Drainage of Mississippi River water shed.
7. Changes of course in the Mississippi River.
8. Destruction of levee by caving banks and flood waters.
9. Renewal of levee by loop levees on new location.
10. Protective works on dykes, revetment, pavements.
11. Increased security, height, free board, base, slopes, banquette.
12. Re-enforcement, foundation, land slide area, sub levee.
13. Maintenance of levee, high water protection, grading, clearing, repairs.

That the adoption of such new plans and specifications has necessitated the re-adjustment of the betterments and rate of taxation, until, at the present time, the assessed bet- [fol. 36] terment is $5.00 per acre, and rate of taxation is 5%, thus affording an annual revenue of 25 cents per acre per annum, which is more than six times what was necessary under the original plan.

Defendant therefore alleges that the improvement contemplated by the St. Francis Levee District is not now and was not at the time the plaintiff became the legal or equitable owners of said lands, a completed project, and that such lands were, therefore, subject to taxation for the St. Francis Levee District for the years mentioned in the complaint. That such lands are subject to taxation for subsequent years, and that the defendant should not be enjoined from the assessment, levy and collection of such taxes.

Wherefore this defendant prays that the complaint be dismissed for want of equity, for its costs herein expended and for all other proper relief.

Mann & McCulloch, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 37] In Chancery Court of Poinsett County

Stipulation re Evidence, etc.

The following stipulation is this day entered into by and between A. L. Adams, as solicitor for Roy Rice and others, and John W. Scobey, as solicitor for D. F. Portis, Mare Shurts and others, on behalf of all the clients they may represent in this litigation involving substantially the same question, and Chas. D. Frierson, Solicitor for Drainage District No. 7, Poinsett County, Arkansas, in the presence of Hon. S. T. Mayo, heretofore appointed by the Court as Special Master, as reflecting the record, to be considered as evidence in each and every one of said causes; provided, however, that either party may introduce other evidence not contradictory herewith.

It is agreed that this stipulation and the records embraced herein may be offered in evidence in either one or all of said suits, or in any other suits concerning the identical subject matter that may be filed by any of said solicitors.

I

It is agreed that the attached list from the Registrar of the United States Land Office marked Exhibit "1" correctly represents the description of tract and acreage, name of the purchaser, or entryman, date of sale or entry, number of receipt and certificate of purchase, date of final certificate and date of patent, as to the lands involved in this controversy. If Exhibit 1 does not cover all the lands that may be covered in this litigation before submission, then an additional certificate from the Registrar of the United [fol. 38] States Land Office may be introduced as evidence of the same facts as to any such additional tracts of land.

II

Drainage District No. 7, Poinsett County, Arkansas, was created by Special Act of the General Assembly of Arkansas of the year 1917 being Act 193, approved March 9, 1917, bearing the emergency clause, Vol. 1 Acts of 1917 p. 1053, and the original Act has been amended by a number of special Acts to which either party may refer. No land in

Township 12 North, Range 7 East, was included within the original boundaries of the said drainage district as described in said Act 193.

Said Drainage District, after organization, filed plans on January 17, 1918 not including any contemplated improvement east of the west bank of the St. Francis River. Said report of the original plans appears on County Court Record "H" p. 348 and the plans were approved by the County Court on January 17, 1917 as shown in County Court Record "H" pages 364 to 365.

On January 22, 1918 the drainage district reported to the County Court their assessment of benefits and damages to lands at that time embraced within the proposed improvements and the same is covered by County Court Record "H" page 366. No assessments were filed as to any land in Township 12 North, Range 7 East, at that time.

On January 22, 1918 as shown on County Court Record "H" p. 367 369 the County Court approved the report and fixed February 25, 1918 as the day to hear objections to [fol. 39] assessments of benefits and damages and ordered notices published.

The following petition was filed, and was the basis of an order rendered on January 25, 1918 hereinafter copied, the said petitions, however, appearing of record upon County Court Record "H" pages 484 492 inclusive, to wit:

[fol. 40] County Court Record "H," Page 484 to 492, Inclusive

Poinsett County Court Record "H," Page 484, Poinsett County, Arkansas, April Term, April 17th, 1919

Petition

To the Honorable the County Court of Poinsett County, Arkansas, and to the Honorable the Board of Directors of Drainage District Number Seven of Poinsett County, Arkansas:

The undersigned who own a majority in land value and also a majority in acreage, and who constitute a majority in number, of owners of the following lands situated wholly in Poinsett County, Arkansas, to wit:

All of Township 12 North, Range 7 East, being sections from one to thirty six (36) both inclusive:

(Here follows description of other lands not involved in this litigation.)

Respectfully represent and would show that all of said lands lie in a contiguous body and adjoin on the east the eastern boundary line of Drainage District No. 7 of Poinsett County, Arkansas, which was organized by Act 193 of the General Assembly of Arkansas of 1917, page 1053 of the Session Laws of 1917, that all of the above described lands would and could be drained, reclaimed and benefited by the proposed drainage and levee improvements contemplated and to be constructed by said Drainage District, and that it [fol. 41] will be to the best interest of the owners thereof for all of the said above described lands to be annexed to and made a part of said Drainage District, and

To that end and for that purpose, do hereby jointly and severally respectfully petition and request that said County Court and said Board of Directors, do each respectively render, make and pass and adopt such judgment, orders, and resolutions and findings in that behalf as may be necessary under the laws and provisions of said Act. No. 193, to cause all of said above described lands to be annexed to and to thereafter be embraced in and made a part of said Drainage District Number 7; and

That when said lands are so annexed and reclaimed to and incorporated in said Drainage District they be fully protected, drained and reclaimed from overflowed and storm water, as if the same were originally incorporated in said Drainage District under the terms of said act creating the same; and for said purposes there be levied against said lands, in accordance with the benefits and assessments as may be necessary to pay their proportionate part of the cost of drainage, protecting and reclaiming the same.

Respectfully submitted.

(Here follows list of names and description of property owned by each and including Roy Rice, the original plaintiff herein and all the other parties whose rights are to be determined by this suit under the stipulation.)

[fol. 42] On January 25, 1918, the County Court of Poinsett County rendered the following order upon said petition, to-wit:

[fol. 43] In County Court Record "H," Poinsett County, Arkansas, appears order made and entered at the January term of said Court on Tuesday, January 25th, 1918. Said order states in part:

It being made to appear to the court that persons claiming to own a majority in land value, a majority in acreage and also who constitute a majority of landowners, have heretofore filed their petition in the office of the Clerk of this Court, asking and requesting that the lands and territory described in said petition (and which will be fully described in the form of notice to be hereinafter set out in this order), be annexed to and embraced in Drainage District Number Seven of Poinsett County, Arkansas, which was created by Act 193 of General Assembly of Arkansas of 1917; and

Said petitioners having requested the court to fix a day certain upon which they could be heard and said petition be considered by the court, and that the clerk of the court be required to give notice by publication of said hearing as required by the terms of said 193; and

It appearing to the Court that said petition is in due form and that the hearing thereon as requested by said petitioners should be granted, it is hereby ordered and adjudged that Friday, the 15th day of March, 1918, be fixed as the day upon which the court will hear and consider said petition and request of the petitioners as set out therein, and that the clerk of this court cause to be published for two weeks (three insertions) in the Harrisburg Post, Harrisburg, Ark., a newspaper of general circulation and [fol. 44] published in Poinsett County, Arkansas, the following notice of said hearing, to-wit:

Here follows form of notice to be signed by Clerk and published pursuant to this order of Court. This notice contains descriptions of the lands including that in the case at bar.

And it is further ordered that this matter and cause be continued until said date for said hearing upon said petition.

S. T. Mayo, County Judge.

O. K. Enter.

[fol. 45] The foregoing petition and order were the first steps taken towards the annexation of the lands embraced in said petition and order.

[fol. 46] "There appears in County Court Record "H," pp. 385 to 389, inclusive, an order of that Court made and entered on February 25th, 1918, a regular adjourned day of the Court confirming with certain exceptions not named and not affecting this litigation, the assessments made and filed on January 17, 1918. The order is in part, as follows:"

On this Feb. 25, 1918, the same being a regular adjourned day of the County Court and being the day fixed for the hearing of the assessment of benefits and damages to lands in Darainage District Number Seven of Poinsett County, Arkansas; and the said Board of Directors of Drainage District Number Seven, created under Act No. 193 of the General Assembly of Arkansas, at the session of 1917, being present in person and by their attorneys, Lamb & Frierson, and also the civil engineers of said district, Pride & Fairley, being present; and the consulting engineers, Messrs. Harmon and Perkins; the report of the said Board of Directors filed on January 17, 1918 and the assessment book filed on said day by said Board showing the assessment of benefits and damages to all lands, town lots, railroads, tram roads and rights of way within the said district, are presented to the Court;

And the Court finds that upon the filing of the said report and the said assessment book, this court at its session of January 22, 1918, a regular adjourned day, did fix the present day, Feb. 25, 1918 as the day for the hearing of the said assessment of benefits and damages; and that on said day, this court ordered the clerk of the county court [fol. 47] to publish the notice required by law of this hearing and the date thereof; such notice to give a description of the land assessed in such large tracts as the description

will permit, and to notify the owners of said lands that said lands have been assessed for drainage purposes in said district, and that said owners if they so desire might appear before the county court on this day, and present their complaints, if any they have, against the assessments of benefits to any of said land in said district, or the allowance of damages thereto.

And the Court finds that the Clerk of the County Court of Poinsett County duly published the notice required by law of the said hearing, in manner and form, and for the time required by law; and that proof of publication thereof is this day duly filed.

* * * * * * *

And the Court after hearing the oral evidence of C. M. Thompson, N. T. Whittaker and J. G. Giant, and of Joe T. Pride; and after considering the assessment book, and the report of said Board of Directors, the maps, plans and profiles and all the records, doth find:

(1) That immediately upon the filing of said plans and specifications with the Clerk of the County Court the said Board of Directors of Drainage District Number 7, did proceed to view and inspect the lands, railroads, town lots, tram roads and rights of way within the said district and that they inscribed in the said assessment book the description of each tract of land, railroad, tram roads, right of way and town lot, and assessed the value of the benefits [fol. 48] to accrue accrue thereto by reason of such proposed improvement; and that the said board entered such assessment of benefits besides the description, together with an estimate of what the landowner will probably have to pay on the said assessment for the first year; that said assessment embraced not merely the land, but all public and corporate roads, railroads, tramroads, rights of way, town lots and other improvements on the lands that will be benefited by said proposed improvement; and that they placed beside the description of each tract of land, railroad, tramroad, right of way or town lot, the name of the supposed owner, as shown by the last County Assessment; and that the said Board of Directors also assessed all damages they found would accrue to any landowner by reason of

the proposed improvement, including all injury to lands taken or damaged; and where said Board of Directors returned in said book no damage as to any tract or tracts of land, railroad, tram road, right-of-way or town lot, the court finds that as to such property the said Board of Directors expressly found that no damage would be sustained thereby. The court further finds that when their said assessment was completed, and inscribed in said book, the said Board of Directors subscribed said assessment, and deposited it on file with the Clerk of the County Court of Poinsett County, there to be kept and preserved as a public record; and that upon filing thereof this Court fixed this day for the hearing and the Clerk published the notice required by law.

And the Court finds the said assessment of benefits and of damages to all lands concerning which no objection or [fol. 49] protest has been filed by any of the parties hereinabove named, to be just and fair, and equal, and finds that the said lands so assessed, will be benefited to the extent named and inscribed in said assessment book, and that such assessments do not exceed the benefits that will accrue thereto, and that the damages allowed are reasonable and fair, and that where no damages are shown in said assessment book, or in separate orders, no damages in fact will be incurred by the construction of said improvement.

And the court finds that said assessment of benefits and of damages excepting the lands of the owners herein expressly named, should be in all things established and confirmed, and that there should be assessed upon the said real property of the district a tax sufficient to pay the estimated cost of the improvement, with 10% added for unforseen contingencies, which tax should be paid by the real property owners in the district from the time the same is levied by this court, and should be entitled to preference over all judgments, executions, encumbrances or liens whatsoever created; and that such lien should continue until such assessment with any penalty and cost that may accrue thereon shall have been paid.

And the Court finds that the entire estimated cost of the improvement including the removale of all earth, digging of all ditches, construction of all levees and bridges, the

cost of all rights of way, and all damages, fees of attorneys and engineers, and court costs, and all other expenses to be incurred by the said district to be one million four hundred fifty eight thousand seven hundred three and no 100 ($1,458,703.00) Dollars.

[fol. 50] It is therefore considered, ordered and adjudged by the Court that the said assessments of benefits and of damages, as fixed by the said Board of Directors of said District, as to all lands, except the lands belonging to the remonstrants hereinabove named, be and the same are hereby approved, confirmed and established; and that as to all lands, the assessment of which has been modified in other orders this day made, the assessment as modified, be and the same is hereby established, approved and confirmed as the assessment of benefits and damages upon the same land, all as shown in the said assessment book on file; and it is further considered, ordered and adjudged that there be assessed upon all the real property of the district a tax sufficient to pay the estimated cost of the improvement, to wit: $1,458,703.00, with 10% added thereto for unforseen contingencies, and that such tax be paid by the real property owners in the district in the proportion of the amount of the assessment of the benefits thereon and that said sums be paid in annual installments, payable at a rate to be hereafter fixed, and that the tax so levied be, and the same is hereby declared and fixed as a lien upon the real property in the district from the time that the same is levied, and shall be entitled to preference over all judgments, executions, incumbrances and liens howsoever created, and said lien shall continue until such assessment, with any penalty and costs that may accrue thereon shall have been paid.

[fol. 51] On March 15, 1918, the following order was rendered by the County Court of Poinsett County adding the lands described in the previous petition and order:

[fol. 52] County Court Record "H," Page 389, Poinsett County, Arkansas, January Term, March 11th, 1918

Friday, March 15th, 1918, Court met pursuant to adjournment, present and presiding the same as when last in session, when the following business was done and had, to-wit:

In the Matter of Drainage District Number Seven of Poinsett County, Arkansas, and Petition for the Annexation of Certain Territory Thereto.

Order of Court

On this, the 15th day of March, 1918, being the date heretofore fixed by an order of this court as the day upon which the court would hear and consider the petition heretofore filed with the Clerk of this court, and request of the petitioners as set out therein, requesting that certain territory and lands situated in Poinsett County, Arkansas, and fully described in said petition be annexed to Drainage District Number Seven, of said Poinsett County, said territory and lands and said description thereof being heretofore set out; said petitioners, by attorneys, appeared in open court and presented said petition to the Court upon the oral evidence, records and documentary proof offered in support of the same.

And the court having seen, examined, considered and heard said petition, as well as said evidence offered in support of the same, and being well and sufficiently advised in the premises, doth find said petition is in due form and duly and legally executed and signed by the persons and [fol. 53] corporations whose names appear thereon; that due and timely notice of the application for the annexation of the territory and lands described in said petition has been given by the Clerk of this Court, as the law directs, and as ordered by the Court, by publishing same in a newspaper published and issued in Poinsett County; that the Board of Directors of said Drainage District appeared in open court and consented that said territory and lands be annexed to said Drainage District.

The said petition contains the names and bona fide signatures of persons owning a majority in value, also a majority in acreage and also who constitute a majority in number of land owners of the territory and lands set out herein, and which is the same territory and lands described and set out in said petition, to-wit:

All of township Twelve (12) North, Range Seven (7) East, being sections from one to thirty six both inclusive; and

"(Here follows description of other lands not directly affected by this case.)"

. . . . . .

And the court further finds that no person or persons have filed any objections or exceptions to the annexation of said territory and lands to said Drainage District Number Seven of Poinsett County; that said territory lies in a contiguous body and adjoins said Drainage District, and in order to properly and economically drain, reclaim, and protect said territory and lands described above from storm and overflow water, it is necessary for the same to be annexed to and embraced in said Drainage District, and that all of said territory and lands will thereby be greatly benefited and enhanced in value.

(fol. 34) Wherefore it is considered, ordered and adjudged by the Court that all of said territory and lands as described above be and the same is hereby annexed to and embraced in and made a part of Drainage District Number Seven, of Poinsett County, Arkansas, which was created by Act [illegible] of the General Assembly of Arkansas, of 1917, that said Drainage District and the Board of Directors, officers, engineers, attorneys, agents and employees of said Drainage District forthwith cause said territory and lands so annexed thereto to be drained, reclaimed and protected from storm and overflow water as fully and with like effect as if the same were originally incorporated in said District under the terms of the Act creating the same, and that there be levied against said territory and lands so annexed, in accordance with the benefits which the same will respectively receive, such benefits and assessments as may be necessary to pay its proportionate part of the cost of draining, reclaiming and protecting the same.

It is further ordered and adjudged by the Court that a certified copy of this judgment and order be delivered by the clerk of this Court to the chairman of the Board of Directors of Drainage District Number Seven, of Poinsett County, and that the costs of this proceeding be taxed against the petitioners.

(s) S. T. Mayo, County Judge

[fol. 55] That on May 24, 1919, after the filing of altered plans by the said Drainage District, the County Court rendered the following order (being entered nunc pro tunc July 28, 1919), to wit:

[fol. 56] Poinsett County Court Record "H." Poinsett County, Arkansas, July Term, July 28, 1919

County Court Record "H," P. 535

In the Matter of Drainage District Number 7, Poinsett County, Arkansas

" Judgment Fixing Day for Hearing Assessments and Approving Plans

On this May 24, 1919, the same being a regular adjourned day of this Court, the Board of Directors of Drainage District No. 7 of Poinsett County, N. T. Whittaker, J. G. Gaut and C. M. Thompson, appearing in person and by their attorney, Chas. D. Frierson, and also appearing Pride & Fairley, engineers of said district, and the said Board files its report, embraced within which report is the report to the Board of its engineers accompanied by maps, plans, profiles and specifications showing the location of all ditches, levees and other improvements and fully describing their character.

Said report contains the altered plan of ditches and drains and other improvements necessitated by the large additional territory added to said district by order of this court rendered March 15, 1918, which addition of said territory was ratified and confirmed by Act No. 35 of the General Assembly of Arkansas, at the session of 1919. The said Board at the same time filed their assessment book in which they have set out their assessment of all benefits, [fol. 57] and of all damages to the lands, railroads, tram roads and town lots in said additional territory. The said Board further files in the original assessment book a proposed modification of certain assessments in the original territory of the district because the change in course of ditches and flood ways has rendered inequitable the assessment of benefits and of damages to certain lands in

the original territory and the Board asks that this Court authorize it to modify said assessments upon the particular lands affected, but not upon any other lands, railroads, tram roads or town lots than those expressly affected by such alteration of plans.

From all of which the Court finds:

1. That since the rendition of the judgments of this Court on the 17th day of Jany. 1918, confirming and approving the plans and specifications for improvements within the original territory of said Drainage District No. 7, the following lands have been added to said district by judgment of this Court, on March 15, 1918, to-wit:

All of Township Twelve (12) North, Range Seven (7) East, being sections from one to thirty six both inclusive; and

"(Here follows description of other lands added to the District, but not directly concerned in this litigation.)

* * * * * * *

2. That subsequently, by Act No. 35 of the General Assembly of Arkansas, session of 1919 the said lands above described, which were added to said territory by said judgment of this court, were added also by the terms of said Act and the judgment of this Court was confirmed by such legislation.

[fol. 58] That on account of such addition it became the duty of the Board to drain a much larger district than was contemplated by the original report herein, and became necessary to provide outlets for large drainage districts in Mississippi and Craighead counties, since the extension of the boundaries of District No. 7 has caused it to meet the boundaries of such districts in other counties. That under the mandate of said Act No. 35 of the session of 1919, and also by the judgment of this court on March 15, 1918 it became the duty of the board to provide drainage for the additional territory hereinbefore described, and it became necessary that the plans of the ditches, drains and other improvements be modified accordingly to drain said additional territory.

3. The Court finds that the engineers of said district, acting in co-operation with the consulting engineers, accordingly planned for the complete improvement and reclamation of the entire territory of the district, which revised plans include not only slight modifications of the plans heretofore filed for the improvement of the original territory of the district, but also include complete plans for the improvement of the additional territory described and to provide outlets to the other drainage districts referred to hereinbefore, the flood waters of which would otherwise flow across the lands of District No. 7.

4. The Court finds that the alteration of the plans of ditches, drains, levees, flood ways and bridges included within that portion of the district for which improvement was originally planned, and for which plans were hereto- [fol. 59] fore approved does not increase the cost more than 25% for that territory.

5. The Court further finds that the territory in the additional territory above described is wet, subject to overflow, which overflow would be increased in depth by the contemplated ditches in Mississippi and Craighead counties, and that said lands cannot be cultivated satisfactorily without drainage, and that with drainage said lands will be susceptible to a high degree of cultivation and the value thereof will be greatly enhanced. The Court finds that the health and welfare of the inhabitants of said territory will be benefited by drainage, and further that drainage will result in great benefit to all railroads, tram roads, side tracks and town lots in the entire territory, removing from the roadbeds of such railroads floodwaters which render it difficult to maintain said roads.

6. The said Board reports and *and* the court finds from the plans that the entire territory embraced in the original plans for improvement and the entire territory added thereto as aforesaid and each and every tract thereof, and each and every railroad, tram road and each and every town lot will be benefited by the proposed improvements, excepting only the following lands: The lands lying between Improvements No. 59, 60 and 61, as the same are set out in the detailed specifications and plans of said dis-

trict, the lands between the said improvements constituting the lands within the levees of the St. Francis Lake and within the floodway which floodway is improvement No. 62.

7. The Court finds that the revised plans will drain and [fol. 60] reclaim the entire territory economically and practically, and that said improvements should be undertaken and completed in accordance with such plans and specifications which are hereby approved.

8. The Court further finds that the Board of Directors has considered the assessment of benefits and of damages to all real property within the territory added to said district by the judgment of this court on March 15, 1918, which addition was confirmed by said Act No. 35 of the General Assembly of Arkansas, of 1919 and that said Board has inscribed and assessed in said book the value of the benefits to accrue to each tract by reason of such proposed improvements has entered such assessment of benefits opposite the description of said tract of land in said book, together with the estimated amount the landowner will probably have to pay on the assessment for the first year. That their assessment embraces not merely the land but also all railroads, tramroads, spur tracks and rights of way and all town lots that will be benefited by said improvements. That they have placed opposite each tract of land the name of the supposed owner as shown by the last county assessment; that said Board of Directors have also assessed and inscribed in said book all damages that they found would accrue to any landowners by reason of the proposed improvements including all injury to lands taken or damaged and where said assessment book shows no assessment of damages as to any particular tract of land, railroad, tramroad, and town lot, the commissioners have expressly found and report that no damages will be sustained thereby.

[fol. 61] 9. And the Court further finds that on account of the alteration and changes made in the former plans for the improvement of the original territory of said district, and on account of the changed course of certain ditches and laterals, levees and floodways and variance in the size of bridges, the assessment heretofore fixed upon certain

particular tracts of land as affected by such changes, has become inequitable and that the Board has separately inscribed in the original assessment *book* their proposed modification of the assessments upon the particular tracts only that are affected by such change and that the Board asks this Court's authority to make such modification. The Court further finds that the modified assessment proposed as to such particular tracts has been inscribed in the same manner, contains the same items and in all respects is filed in the same manner that the assessment of said additional land is filed.

10. And the Court finds that said assessment book containing the assessment of benefits and of damages as aforesaid and containing the modifications proposed as aforesaid duly authenticated by the signatures of the members of said Board was filed with the Clerk of the County Court of Poinsett County on May 24, 1919, to be kept and preserved as a public record.

11. And the Court further finds and the Board of Directors pray that a regular adjourned day of this court should be fixed for the hearing of any complaints regarding any of said assessments either of benefits or of damages that may be filed by any owner of real property within the district who conceives himself to be aggrieved by said [fol. 62] assessment or deems that the assessment of land in the district is inadequate, and further to hear complaints as to any of the proposed modifications of assessments by any owner of real property who conceives that the change of plans renders his assessment inequitable.

12. And the Court further finds that the Clerk of the County Court should be directed to publish a notice as required by law for two weeks in a newspaper published in Poinsett County giving a description of the lands assessed and of lands upon which it is proposed to modify the assessment heretofore made, notifying the owners of all said lands that they may appear before the Court on the day named and present complaints, if any they have, against the assessment of any land in said district.

It is therefore considered, ordered and adjudged by the court that the 23rd day of June, 1919 be and the same is hereby fixed as a regular adjourned day of this court upon which any owners of land in said district may appear before this court and present complaint, if any they have, against the assessment of any lands in said district; and on said day any owner of real property who conceives himself to be aggrieved by the assessment of benefits or of damages or deems that the assessment of any land in the district is inadequate, shall present his complaint to this court and this court shall consider the same and enter its findings thereupon, either confirming or modifying such assessment of benefits or of damages; and the Clerk of this court shall forthwith publish in a newspaper issued in Poinsett County, Arkansas, a description of said lands so [fol 63] assessed notifying the owners that they may appear before this Court upon the day named and present such complaints if any they have against the proposed assessment of any lands in said district or against the allowance of damages therein.

And this judgment having been rendered May 24, 1919 and not then entered of record is ordered entered now for then.

O. K. Enter

S. T. Mayo, County Judge.

[fol 64] "The following order appears in County Court Record 'H,' pp. 511-516":

On this June 28, 1919, the same being a regular adjourned day of the Poinsett County Court, and the day to which the objections and claims of damages of A. A. Smith as to the southeast quarter of Section 25, Township 12 North, Range 6 East, and of F. M. Moore, as to the southwest quarter of Section 25, Township 12 North, Range 6 East, were continued, said claimants Smith and Moore appearing by their attorney J. J. Mardis and the Board of Directors of Drainage District No. 7 appearing in person and by their attorney, Chas. D. Frierson, the cause is heard upon the oral evidence of A. A. Smith, F. M. Moore and W. H. Poe, and upon the maps, exhibits, maps and other evidence, from all of which the Court finds:

That neither said Smith nor said Moore at present has a patent or deed for said lands claimed by them, though they have entered upon the same under the United States Homestead Laws.

The Court further finds that no damage will accrue either to said Smith or Moore until they acquire their patents, nor until the levee on the south side of the St. Francis Sunk Land is built, as planned by the said Drainage District, but that when said patents are issued and when said levees are built, the said Smith and the said Moore will each be damaged by the district to the extent of $2.00 per acre, upon 160 acres each, or $320.00 each.

It is therefore considered, ordered, and adjudged by the Court that when patent issues to the said Smith for the [fol. 65] land entered by him and when the levee shall be built on the south side of the St. Francis Sunk Lands or Lake, by Drainage District No. 7, then the said A. A. Smith shall recover of and from said Drainage District 7 said sum of $320.00, and that when patent shall issue to F. N. Moore to the land so entered by him and when the levee shall be built by Drainage District No. 7 on the south side of said sunk lands or St. Francis Lake, then the said Moore shall recover from said district the sum of $320.00.

And both parties except to said judgment and give notice of intention to appeal.

And this order being rendered June 28, 1919 and not then entered of record the same is ordered entered now for then.

S. T. Mayo.

The second omission is the judgment of the county court of Poinsett county attempting to confirm and establish the assessment of benefits and damages to lands added to said Drainage District No. 7, including all the lands in controversy in the present case, said judgment having been rendered June 23, 1919, being recorded in County Court Record "H" page 511-516, inclusive.

Said judgment was discussed in the lower court, was considered a part of the record, and its omission from the transcript was a clerical misprision apparently due to the inclusion of a judgment modifying certain specific assess- [fol. 66] ments of other lands within the district.

The judgment so omitted should be added to the record which is as follows insofar as it concerns the present controversy omitting certain specific findings as to lands west of the St. Francis River and other lands not in controversy, to-wit:

Poinsett County Court

In the Matter of Assessments on Territory Added to Drainage District No. 7, Poinsett County, Arkansas.

Judgment Confirming Assessment of Benefits and Damages to Lands Added to Drainage District Number Seven

On this June 23, 1919, the same being a regular adjourned day of this Court and being the day fixed in a previous order of this Court rendered May 24, 1919 for this hearing, this matter is heard upon the report of the engineers of the district and the report of the directors of said Drainage District 7 filed on May 24, 1919, together with all exhibits, including maps, modified plans and specifications for the complete improvement of the territory of said Drainage District No. 7; and also upon the assessment book duly filed with the Clerk of the County Court by said Board of Directors on May 24, 1919, showing the assessment of benefits and of damages as fixed by said Board of Directors upon the territory added to said Drainage District No. 7, by judgment of the Poinsett County Court on March 15, 1918, which addition was confirmed by Act No. 35 of the General Assembly of Arkansas at the session of 1919, and the Board of Directors appeared in person and [fol. 67] by their attorney, Chas. D. Frierson, and by their engineers, Pride & Fairley and their consulting engineer, Edmund T. Perkins.

And also appear Chapman & Dewey Land Company, Chapman & Dewey Lumber Company, Kansas City and Memphis Farms Company and Poinsett Lumber & Manufacturing Company by their attorney Allen Hughes, Esquire;

And Trumann Cooperage Company and Weona Land Company appearing by their attorney, G. A. Webster, Esq.;

And St. Louis San Francisco Railway Company, Kansas

City, Ft. Scott & Memphis Railway Company and Walker D. Hines, Director General of Railroads, appearing by their attorneys J. J. Mardis and W. J. and J. H. Orr;

And Wm. Potter, Sam Bundy, Wm. Pritchett, George Keen, H. G. Wade, J. B. Kerr, G. O. Hill, Ike Burnett, M. P. Kirby, Claud Harris, M. C. Roberts, Sam Dempsey, Sam Stuckey, Will Mayes, Dr. Benj. Strong, C. M. Lutterloh and J. F. Gautney, S. F. Savage, J. R. Corpier, J. E. Murphy, J. W. Craddick, D. F. Portis, O. L. Reed appearing by their attorney J. F. Gautney, Esquire, and the following appearing in person:

C. C. Goodwin, Hazel Bros., T. G. Staton, J. N. Bond, W. P. James, J. E. Wood, Mrs. A. M. Ferguson, N. R. Mullins, B. P. Bryant, A. W. Martin, G. E. Mullins, Ed Clem, Geo. Hirschman, W. G. Smith, Mrs. Jessy Dean, A. L. Evans, C. R. Harrington, S. A. Mathis, R. E. Robertson, D. C. Bryant, C. A. Wilroy, Ed Hansen, J. T. Harris, B. F. Taylor, W. F. Driskell, S. P. Thompson, W. N. Hazel, J. B. Channeh, J. W. Carson, W. H. Salbert, S. P. Thompson, D. Hirschman, Thelma Hirschman, O. L. Driskell, S. F. Portis.

And F. M. Moore and A. A. Smith appearing by their [fol. 68] attorney J. J. Mardis, asking damages because the land they claim is between the levees of the storage basin;

And these being all the parties appearing in said cause and all announcing ready;

The Court finds that the notice required by law of the pendency of this proceeding and of the assessment upon said lands and of the hearing thereon on this date by this court was duly given and published for the time and in the manner required by law, proof of publication thereof being duly filed in open court.

And said St. Louis San Francisco Railway Company, Kansas City, Ft. Scott & Memphis Railway Company and Walker D. Hines, Director General of Railroads, filed their written notice demanding an assessment of their damages by a jury, and also Chapman & Dewey Land Company and Poinsett Lumber & Manufacturing Company filed their written demand that their damages be assessed by a jury, which said notices are by the Court referred to the Board of Directors of the said Drainage District.

And the St. Louis-San Francisco Railway Company and Kansas City, Ft. Scott & Memphis Railway Company and Walker D. Hines, Director General of Railroads, filed their petition and bond for removal of the cause so far as it affects the Director General and said Railroad Companies, to the United States District Court, for the Jonesboro Division of the Eastern District of Arkansas.

"(Here follows judgment modifying certain assessments upon the objections of the various parties designated above.)"

[fol. 69] "(Here is set out detailed changes in various laterals.)"

And upon the remonstrances and objections of the parties set out in the following tabulated list the Court hears such objections upon the oral evidence and the original assessment of benefits as filed is modified and fixed as to each of said tracts as set out in the following tabulated list in the last column thereof, to wit:

Owner	Description	Sec	Twp	Rge	Original assessment	Revised assessment
D. F. Portis	E ½ N W ¼	28	12	7	1 140 80	1 026 72
S. F. Savage	E ½ S W ¼	20	12	7	1 337 28	1 203 80
D. F. Portis	Pt. N E ¼ S W ¼	21	12	7	349 00	314 64
Same	N W ¼ S W ¼	23	12	7	1 590 00	1 431 00
Same	Lot 1	21	12	7	991 00	892 44
Same	Lot 2	23	12	7	1 573 00	1 416 24
Same	Lot 3	23	12	7	1 292 40	1 163 16
Same	Lot 4	23	12	7	841 80	756 96
Same	Lot 5	23	12	7	568 00	511 20

(and other assessments were modified.)

It is therefore considered, ordered, and adjudged by the court that the assessments heretofore fixed upon the lands set out in the above list be set aside and that the assessment of benefits to said lands be modified on account of the change of plans and be fixed at the amounts shown in the last column of the above tabulated list and that the Clerk of this Court and the said Board of Directors be and they are hereby authorized to correct the said assessment as filed and to show upon the assessment book the assessment as fully set out in said tabulated list. And all parties consenting thereto, waive their right of appeal.

. . . . . .

It is therefore considered, ordered, and adjudged that the plans be modified by consent, so as to provide for the [fol. 70] extension and excavation of the laterals as above set out; and the Court expressly finds that such modification will not exceed 25% of the cost of the improvement and will in fact not substantially change the total cost of the improvement.

And the Court considering the matter of assessment of benefits and of damages to the following lands added by order of this court, on March 15, 1918 which addition was confirmed by Act No. 35, of the General Assembly of Arkansas, of the session of 1919, (excluding certain tracts described in said bill previously assessed, doth find:

That the following lands were added to the territory of Drainage District No. 7 by order of this Court on March 15, 1918 upon petition of owners of real estate therein and that said addition of territory was confirmed by Act 35 of the General Assembly of the State of Arkansas, of the session of 1919, to wit:

All of Township Twelve (12) north, Range Seven (7) East, being Sections from one to thirty-six, both inclusive.

"(Here follows description of various other lands not directly affected by this litigation)."

* * * * * * *

The Court further finds that after forming the plans for the improvement of said territory and of the entire territory of said district, and having ascertained the cost of the improvement, the Board of Directors of Drainage District 7 filed their report on May 24, showing such modified plans and specifications fully describing the char- [fol. 71] acter of the improvements to be made, the width and depth of the ditches, the probable quantity of earth to be removed and all levees, floodways, conduits, bridges and all other work to be done, the said directors then proceeded to assess the above described lands added to said district and for that purpose said directors actually went upon and viewed the said lands, rights of way and town lots and that they assessed the value of the benefits to accrue to each tract of land by reason of the proposed

improvements, their said assessment of benefits embracing not merely the lands but also all railroads, tramroads, rights of way and other improvements on lands that will be benefited by the proposed drainage system. And the said directors also assessed all damages that they found would accrue to any landowners by reason of the proposed improvement, including all injury to lands taken or damaged, and that they inscribed in a book the description of each tract of land and the value of benefits to accrue to each tract by reason of such improvement and entered such assessment of benefits opposite the description, together with an estimate of what the landowners will probably have to pay on said assessment the first year; and they placed opposite each tract of land the name of the supposed owner as shown by the last County assessment; and that where they returned in said assessment book no assessment of damages as to any tract of land, railroad, tramroad, or right of way, they expressly found and have reported that no damage will be sustained thereby in the construction of said improvement, and the omission of any findings of damages should be deemed a finding and report that no damage will be sustained thereby.

[fol. 22] The Court further finds that when their said assessment was completed, the directors subscribed the same and filed it with the Clerk of this Court on May 24, 1919, to be kept and preserved as a public record and that upon the filing of said assessment and upon the request of the said directors this court fixed this day, June 23, 1919, as the day for hearing any complaints by any owner of real property against the assessment of any lands in said district and on said day this court, by an order duly entered the Clerk to publish a notice of the filing of said assessment in some newspaper published in Prescott County giving the description of the land assessed and stating that the owners might appear on this June 23, 1919 in this court and present complaints, if any they have, against the assessment of any lands or the award or failure to award any damages.

The Court further finds that said notice was duly published by the Clerk in full compliance with law and with said order of this Court, and further that the modified and changed plans for the improvement in said district will

result in the reclamation of the lands in the entire territory, the greater portion of which lands are now wet and subject to overflow and that said plans are practicable and adequate and the cost thereof reasonable, and

The Court further finds said assessment of benefits and of damages to the lands added to the territory of Drainage District No. 7 and hereinbefore specifically set out, should in all things be approved, established and confirmed, as shown and contained in said assessment book, excepting [fol. 23] as to the several tracts of land concerning which separate orders are set out in the preceding portions of this order, the assessment of which tracts are modified to the extent named as to each tract separately.

And the Court finds that the estimated cost of the improvement, as shown in the engineers' report is $[illegible]

It is therefore considered, ordered, and adjudged by the Court that the revised and modified plans of Improvement District No. 7, as shown in the report of the Board of Directors, and of the engineers, be and the same are hereby approved and confirmed, and that the assessment of benefits and of damages made by the Board of Directors of said District and contained in the assessment books and filed with the Clerk of this Court on May 24, 1926, be and the same is in all things confirmed and established. And the directors now ruling upon the Court, the Court doth consider, order and adjudge that there be assessed upon the real property, town lots, railroads and town roads of the district, both the original territory and that added, a tax sufficient to pay the estimated cost of the improvement, $[illegible] which shall be paid by the real property in the district in proportion to the amount of assessment of benefits thereon and shall be taxable in annual installments payable not to exceed [illegible] per cent per year in addition and from hereafter made specially provided, and that the tax so levied shall be a lien upon all the real property in the district from the date of this order, and shall be certified to perform over all claims, exceptions, counterclaims or liens hereinafter created and shall continue until such assessment with any penalty and costs that may [fol. 24] accrue thereon shall have been paid.

And this order being rendered June 22 1919 and not then entered of record the same is ordered entered now nunc pro tunc.

S. T. Mayo Judge.

[fol. 21] "At a regular adjourned day of the County Court for Pinecrest County, held on June 20, 1919, appearing in County Court Record "H," p. 321, and being entered now pro tunc appears judgment of said Court confirming certain modifications in assessment of change of plans. Said order is as follows:"

July, 1919, Term. July 1st, 1919. Record in County Court Record "H," Page 321

Judgment Confirming Certain Modifications in Assessment on Change of Plans

On this June 20, 1919 the same being a regular adjourned day of this court and the day fixed by the order of this Court on June 5, 1919, as the date for hearing the complaint of any property owner who deems that the assessment of his property has become inequitable by reason of the change of plans of the district. The matter of said change of plans and the modifications of assessments on account of such change came up for hearing upon the supplemental report of the Board of Directors of Drainage District No. 2, filed with the County Clerk on June 5, 1919, and also upon the report filed on May 24, 1919 showing the complete changed and revised plans for the improvements in said district, and upon the proposed modifications of assessments upon lands affected by such change of plans and upon the notice published by the Clerk under the order of this court upon said day and upon all the exhibits, maps, modified plans, specifications and estimated cost, the said Board of Directors appearing in person and by their attorney, Chas. D. Stevens, and by their engineer, Poole & Mackey and Chapman & Howe Land Company and Pinecrest Lumber & Manufacturing Company appeared not by their attorney Allen Hughes, Esquire, and file a written demand for the assessment of their damages by a jury and notice of their refusal to acquiesce in damages as fixed by the said Board of Directors and, said notice is referred to the said Board of Directors.

And the said Chapman & Dewey Land Company, Chapman & Dewey Lumber Company, W. Chapman Dewey, Wenna Land Company and Trumann Cooperage Company appearing, certain changes and modifications of assessment of benefits upon said companies, are agreed upon between said companies and the Board of Directors of said Drainage District, all of which fully and specifically appear in judgments of this Court rendered on June 23, 1919 and heretofore entered upon the records of this Court, which said orders and agreement are hereby ratified as to lands embraced in this supplemental proceeding under a report filed June 5, 1919, and notice thereof separately published, with the same effect as if said report and notice had preceded the hearing on June 23, 1919.

And the Court finds that the notice required by law and by the judgment of this Court of the filing of said revised, changed and modified plans for the improvements of said District No. 7 was duly given and published by the Clerk in full compliance with law and the orders of this Court, proof of publication being filed herein and that notice of this hearing upon the proposed modification of assessments under supplemental report of June 5, 1919 was duly published in accordance with law and the order of this Court; that said notice describes the following lands:

[fol. 77] (Here follows description of lands not directly involved in this suit.)

. . . . . .

And the Court finds that the addition of territory to the original territory of said district No. 7 necessitated a modification and change of plans for the improvement and that the Board of Directors accordingly considered the alteration of said plans and the engineers and the said Board filed with the Clerk of the Court their report showing a complete revision and modification of said plans on May 24, 1919.

The Court finds that in said report the Board reported that certain modifications in the assessments heretofore fixed being rendered inequitable by such change of plans as to certain particular tracts of land which are affected by the change of the course of the laterals and of certain

floodways and levees and that the Board asked that this court grant it authority to make such modifications, and on said May 24, 1919, this Board filed a supplemental report and assessment proposing such modifications, and

The Court finds that such proposed modifications as set out in said assessment of benefits are reasonable and just and will render the said assessment equitable, excepting as the same is modified by the orders rendered June 23, 1919, hereinbefore referred to and excepting and reserving the question of damages claimed by the Poinsett Lumber & Manufacturing Company and by Chapman & Dewey Land Company, and that the remaining modifications of assessment upon said lands as proposed by the said Board of Directors should be and the same are hereby confirmed, ratified and approved.

[fol. 78] And it appearing to the Court that the estimated cost, as shown in the engineer's report, for the entire improvement in said district is $3,392,000.00, and that the change of plans will not increase the total cost of the improvement in the original territory more than 25%.

It is therefore considered, ordered and adjudged by the Court that the modification of assessments on account of such change of plans as contained in the assessment book filed with the Clerk on May 24, 1919 with the exceptions above set out, be and the same are hereby confirmed and established and the Directors now calling upon the Court the Court doth consider, order and adjudge that there be assessed upon the real property, town lots, railroads and tram roads of the district, a tax sufficient to pay the estimated cost of the improvement, $3,392,000, which shall be paid by the real property in the district in proportion to the amount of assessment of benefits thereon and to be paid in annual installments not to exceed 25% for any one year in manner and form to be hereafter more specifically provided and that the tax so levied shall be a lien upon all the real property in the district from the date of this order and shall be entitled to preference over all demands, executions, encumbrances until tax and any penalty and costs that may accrue thereon shall have been paid.

[fol. 79] The following judgment appears in County Court Record "H," page 321, and is as follows, to wit:

In the Matter of Change of Plans of Drainage District No. 7 and of Additional Modification of Assessments on Account Thereof, According to Supplemental Report Filed June 14, 1919

Judgment Confirming Certain Modifications in Assessment on Change of Plans

On this July 5, 1919, the same being a regular adjourned day of this Court, and being the day fixed by the Court in its order of June 14, 1919, as the date for hearing the complaint of any property owner who deems that the assessment of his property has become inequitable by reason of the change of plans of the district, the matter of said change of plan/s and the modification of assessments on account thereof came up for hearing upon the supplemental report of the Board of Directors of Drainage District No. 7, filed with the County Clerk on June 14, 1919 and also upon the report filed on May 26, 1919 showing the complete changed and revised plans for the improvement in said district and upon the proposed modification of assessments upon lands affected by such change of plans and upon the notice published by the Clerk under order of this court upon said day and upon all the exhibits, maps, modified plans, specifications and estimated cost, the said Board of Directors appearing in person and by their attorney, Chas. D. Frierson, and by its engineers, Pride & Fairley and Chapman & Dewey Land Company and Chapman & Dewey Lumber Company and Kansas City & Memphis Farms Company [fol. 80] appearing, certain modifications of their assessments are agreed upon as shown in previous orders of this court dated June 23, and June 28, 1919, and the same are ratified and confirmed.

And the Court finds that the notice required by law and by the judgment of this Court of the filing of said revised, changed and modified plans for the improvement of said District No. 7 was duly given and published by the Clerk in full compliance with the law and the orders of this Court, proof of publication being duly filed herein and that notice of this hearing upon the proposed modification of assess-

ments under the supplemental report of June 14, 1919 was duly published in accordance with law and the orders of this Court, said notice describing the following lands:

(Here follows description of lands not directly involved in this suit.)

And the Court finds that the addition of territory to the original territory of said District No. 7 necessitated a modification and change of plans for the improvement and that the Board of Directors accordingly considered the alteration of said plans and the engineers and the said Board filed with the Clerk of the Court their report showing a complete revision and modification of said plans on May 24, 1919.

The Court finds that in said report the Board reported certain modifications in the assessments, those heretofore fixed being rendered inequitable by such change of plans as to certain particular tracts of land which are affected by the change of the course of the laterals and of certain floodways and levees and that the Board asked that this [fol. 81] Court grant it authority to make such modifications and on said May 24, 1919 this Board filed a supplemental report and assessment proposing such modifications, and

The Court finds that such proposed modifications as set out in said assessment of benefits are reasonable and just and will render the said assessment equitable, excepting as the same is modified by the orders rendered June 23, 1919 and June 28, 1919 hereinbefore referred to and excepting and reserving the question of damages claimed by Pomsett Lumber & Manufacturing Company and by Chapman & Dewey Land Company, and that the remaining modification of assessments upon said lands as proposed by the said Board of Directors should be and the same are hereby confirmed, ratified and approved.

And it appearing to the Court that the estimated cost, as shown in the engineer's report, for the entire improvement in said District is $1,392,188.00 and that the change of plans will not increase the total cost of improvement in the original territory more than 25%.

It is therefore considered, ordered and adjudged by the Court that the modification of assessments on account of

such change of plans as contained in the assessment book filed with the Clerk on May 24, 1919 with the exceptions hereinabove set out, be and the same are hereby confirmed and established and the Directors now calling upon the Court the Court doth consider, order and adjudge that there be assessed upon the real property, town lots, railroads and tram roads of the district, a tax sufficient to pay the estimated cost of the improvement $3,392,000.00 which [fol. 82] shall be paid by the real property in the District in proportion to the amount of assessment of benefits thereon and to be paid in annual installments not to exceed 25% for any one year in manner and form to be hereafter more specifically provided and that the tax so levied shall be a lien upon all the real property in the district from the date of this order and shall be entitled to preference over all demands, executions and encumbrances or liens and any penalty and costs that may accrue therein shall have been paid.

And this order being rendered July 5, 1919, and not then entered of record the same is ordered entered now for then.

S. T. Mayo, Judge.

[fol. 83] By Special Act No. 35, page 52 Special Acts of Arkansas, of the session of 1919, approved February 3, 1919, the addition of said territory described in the petition hereinbefore copied was confirmed.

[fol. 84] "In County Court Record 'I,' page 59, appears an order entered on February 16, 1921, a regular adjourned day of that Court. Said order states":

In the Matter of Proposed Modification of Assessments Filed December 31st, 1920, by Drainage District #7, Poinsett County, Arkansas

On this February 16th, 1921, the Court met pursuant to adjournment of February 15th, in regular adjourned session of said Court and the matter of assessments of benefits and of damages as filed on December 31st, 1920 by the Board of Directors of Drainage District Number Seven (7) of Poinsett County, Arkansas, is presented to the court and the said Board of Directors appear in person

and by their attorney Lamb & Frierson and by their consulting engineers Edmund T. Perkins and Jacob A. Harmon, and by their engineers, Pride & Fairley and by their secretary C. R. French, and also appeared St. Louis San Francisco Railway Company by their engineers and by its attorney J. H. Orr, and also appeared Chapman & Dewey Land Company and its associate companies, the hearing is by consent set for the 4th day of April, 1921, which is hereby fixed as an adjourned day of this court.

Also comes T. E. Allyn, J. H. Hawthorne, and H. P. Maddox, representing the following persons all of whom appear either in person or by their attorneys, to-wit:

Elijah Ransome, Chas. Smith, Bert D. Plunk, A. A. Mayer, J. E. Reader, Rufus Wilson, A. N. Moore, S. R. [fol. 86] Banks, Fannie Pate, E. G. Allen, Walter Craig, Henry Field, J. C. Butler, D. H. Embers, E. E. Sorter, Eunice B. James, G. W. White, Marion McGowan, Chas. Wilson, J. F. Richmond, W. L. Taylor, A. R. Fithian, Edgar C. Cantrell, H. A. Furst, A. C. Stirits & Sons, Walker Horton, S. B. Stevens, L. Weyman, B. C. Arnold, Emma Noshe, F. E. Denson, Denson & Hawthorne, J. L. Stens, J. P. Henders, J. E. Son, Annie Stotts, Alex Smith, F. N. Moore, A. W. Sullivan, Mack Son, W. H. Redford, E. F. Abbotts, Jerome Hayes, W. O. Jones, Will Rosamond, E. J. Ollin, J. E. Buxton, W. A. Pearce, A. A. Jernigan, N. J. Dabbs, Dan Hill, C. J. Steward, W. J. Boshere, Oscar Jones, Edward Fowler.

Whereupon the Board of Directors of said Drainage District Number 7 in open Court proposed that if the occupants of the 1,200 acres of so-called Sunk Lands covered by said assessment desired the modifications of the plans of said district to practically the basis of the plans of the district adopted in 1918 so far as said lands were concerned, the assessment thereof will be withdrawn and said lands would neither be improved nor assessed.

Thereupon the said persons and their attorneys withdrew and later reported into Court a division of sentiment, the majority favoring a change of plans so as to eliminate said lands from the improvement and from the assessment.

The said Board of Directors thereupon dismissed the said assessment and asked leave to withdraw the same to cancel the said assessment of benefits and of damages

and asked leave to file modified and revised plans for the improvements at a later time with such revision of assessments as might then become necessary, and same was [fol. 86] granted, and this proceeding dismissed insofar as the assessment book filed December 31st, 1920, is concerned at the cost of the Drainage District.

It is therefore considered, ordered and adjudged that the assessment book filed December 31st, 1920 be withdrawn and dismissed and that said Board of Directors have leave to modify said plans and to file such assessment as it may deem proper at a later day without prejudice and that the said Board pay the cost of this proceeding.

[fol. 87] On April 6th, 1922, in County Court Record "I," page 167, of the records of Poinsett County, appears the following order, to-wit:

In the Matter of the Revision of Plans of Drainage District No. 7, Poinsett County, Arkansas, and the Modification, Assessment, and Reassessment of Lands on Account of Such Changes According to Report of the Board Filed April 5, 1922

Order

On this April 6, 1922, the same being a regular adjourned day of the County Court of Poinsett County the report of the Board of Directors of Drainage District No. 7, Poinsett County, Arkansas, is presented, accompanied by the report of its engineers showing certain changes of plans, including the width and depth of ditches a general description of the work and structures proposed to be done or erected and a description of the right of way required, and from the said report and the accompanying exhibits and other evidence the Court finds: That the said report should be approved and that the said Board of Directors should proceed with the work in the said District according to the said revised and modified plans.

And the Court finding that a further report of the said Board of Directors was filed with the Clerk of the County Court on April 5, 1922, wherein said board finds that lands not heretofore assessed have been benefited or damaged by

the changes, alterations, amendments and modifications of the previous plans of the said board, and further that the [fol. 88] assessments of benefits and of damages to certain lands heretofore assessed have become inequitable on account of such amended, altered and modified plans of the work in the said district, and that on account of such facts the said Board of Directors have viewed the lands and have assessed and re assessed the benefits and the damages to the lands of said district. That the said Board has inscribed its assessments or re assessment of benefits and damages in an assesment book which (when approved by this court) is to supersede previous assessment and be the sole assessment book of said district, and that in said book the said board has inscribed the description of each tract of land, railroad, tramroad, town lot, assessing the value of the benefits accruing thereto by reason of the altered and amended plans of the improvements, together with an estimate of what the landowner will probably have to pay on the assessment for the first year thereafter and that their said assessment embraces not merely the land, but all railroads, tramroads and other improvements on the lands that will be benefited and that the board has placed beside each tract of land the name of the supposed owner as shown by the last County assessment and that the board has also shown opposite said description all damages that will accrue to any landowner in its opinion by reason of the proposed improvements including all injury to lands taken or damaged and where no assessment of damages as to any tract of land is made in said book the Board has found that no damage will be sustained thereby.

And the Court finds that said reassessment has been [fol. 89] deposited with the Clerk of the County Court being duly signed by the Board of Directors to be kept as a public record. And the Board asking that this Court fix a day for the hearing upon the matter of confirming said assessments or modifying and establishing same, and that this court direct the Clerk to publish a notice of such hearing, the Court finds that May 31, 1922 should be set for that purpose and that the Clerk should publish a notice two consecutive weeks as required by law, said publication ending not less than ten days before the date set for the hearing by this Court.

It is therefore considered, ordered, and adjudged by the Court: That the said altered and modified plans be approved and the Board be authorized to proceed with the construction according thereto; that May 31, 1922, aforesaid be and it is fixed as the day for the hearing upon the assessment or re-assessment of benefits and damages as filed by the said Board of Directors under the revised altered plans, and that the Clerk forthwith publish a notice in some newspaper issued in Poinsett County for two consecutive weeks, weekly notifying the landowners who deem themselves aggrieved by said assessment or re-assessment of benefits or damages or deem that the assessment of any lands in the district is inadequate shall present their complaint to the County Court upon the said day and that the said Court shall consider the same and the said proposed assessments, either confirming, increasing or diminishing the assessment of benefits or damages and enter a judgment thereon as provided by Section 9 of the original Act creating said district, and that the said day above men-[fol. 90] tioned is fixed as a regular adjourned day of this court for said hearing.

W. W. Warren, County Judge.

[fol. 91] On May 31st, 1922, in Record "I," of the Record of the County Court, appears the following order, at pages 172-176, to wit:

POINSETT COUNTY COURT

In the Matter of Reassessment of Benefits and Damages of DRAINAGE DISTRICT No. 7, POINSETT COUNTY, ARKANSAS, in Accordance with the Changed Plans Filed April 5, 1922

On this May 31, 1922 the matter of the revised assessment of benefits and damages in Drainage District No. 7, of Poinsett County, Arkansas, upon the changed and revised plans filed by the Board with the County Clerk on April 5, 1922, came on to be heard, this being the adjourned day of this Court regularly fixed by a previous judgment of this court on the 6th day of April, 1922, for said hearing, there being present in open court all the commissioners of said district, and its attorneys, Lamb & Frierson, and

its secretary and engineers, and consulting engineers and the said board filed the proof of publication of the notice signed by the County Clerk on April 5, 1922, notifying the landowners of the revision and alteration of the plans of said district, and also proof of publication of the notice signed by the Clerk of the County Court concerning the filing of the revised assessment or re-assessment of benefits and damages tendered by the said board in accordance with the said changed, revised and modified plans, both of which said notices the Court finds to have been duly published for the time and in the manner required by law and in accordance with the orders of this Court. The said Board of Directors announced ready and offered in evidence:

[fol. 92] 1. The two said proofs of publication of notices, with notices attached.

2. The report of the Board of Directors, including the report of the engineers, showing a revision, modification and alteration of the plans for the improvements of said district, which said reports the Court finds were duly filed with the County Court Clerk on April 5, 1922.

3. The book containing the revised assessment or re-assessment of benefits and damages to the real property embraced within said Drainage District No. 7, which the Court finds to have been filed with the County Clerk on April 5, 1922, and the court finds that all said reports, together with the maps, plans and specifications attached thereto and filed therewith and the said book of re-assessments are each and all regularly signed and certified by the said Board of Directors and are in the form required by law.

And C. T. Carpenter filed a motion to quash the notices above referred to of the filing of the revised plans and of the hearing on the re-assessment as above set out, said motion being on behalf of the following parties:

(Here follows list of a large number of objectors.)

After argument of counsel the court finds said notice is in full compliance with the statute, was properly and duly published in all respects and doth overrule the said motion to quash and finds that all parties were duly served with

legal notice and the parties filing said motion object and except to said order overruling their said motion to quash.

Thereupon said C. T. Carpenter, T. E. Allyn, Basil Baker [fol. 93] and J. F. Gautney filed objections and remonstrances in writing on behalf of the several respective parties represented by them as set out in detail hereinabove.

Cooley & Adams filed objections and remonstrances for G. E. Deyerle, Frank Vowells and H. M. Cooley and Archer Wheatley.

H. P. Maddox filed objections and remonstrances for H. L. Finn, C. E. Laswell, J. A. Bardsher, Hatchiecoon Hunting and Fishing Company Club.

W. H. Orr filed objections and remonstrances for St. Louis San Francisco Railway Company.

S. T. Mayo filed objections and remonstrances for Geo. O. Campbell, D. C. Robertson, Sam Cole, W. A. Pearce, G. W. York, B. C. Arnold, H. L. Cole, W. A. Dudley, Rose Pearce, G. C. Forbes, Craighead County, Land & Com. Co., Henson & Douglas, C. T. Bass, D. A. Saunders.

J. H. Hawthorne filed objections and remonstrances for J. W. Patterson, P. C. Patterson, L. Wayman, A. C. Stiritz & Son, F. E. Denson, W. A. Pierce, J. C. Underwood, Walker Horton, Edgar C. Cantrell, J. P. Henders, S. B. Stevens, F. E. Denson and G. A. Miller, J. L. Stevens, H. A. Furst, Emma Nolise, B. C. Arnold, J. H. Hawthorne, Dan Hill.

J. Brinkerhoff filed objections and remonstarnces for J. Brinkerhoff, W. W. Verser, Cate Lanieve Co., Mason & Portis, T. G. Staton, Poinsett Lbr. & Mfg. Co., H. W. Benson, *H. W. Benson*, A. J. Tannebaum, Robt. D. Eckelberger, C. S. Robinson, Wm. Potter, J. E. Sarter, Dr. B. F. Taylor, I. D. Walter, D. S. Portis, J. E. Murphy, Chapman & Dewey Lbr. Co., K. C. & M. Farms Co.

J. J. Mardis filed objections and remonstrances for J. N. Morgan, M. M. Martin J. W. Powell, T. B. Glasgow, Mrs. Lulu Coker, Earl B. Glasgow, G. W. Snyder, R. S. Lady, J. O. Brooks, J. L. Martin, W. T. Clem, C. H. Lily, R. Lily, [fol. 94] A. J. Huskey, J. M. Jackson, S. A. Carroll, S. B. Stephens, A. Gilligan, W. D. Williams, Anna M. Reynolds, Claud Heeb, B. J. Wade, Mrs. S. Spencer, R. H. Hogge, D. C. Robertson, O. A. Houston, E. W. Richards, Ed Richard-

son, W. S. and S. L. Ryan, H. Heckman, Ben Brown, C. A. James, W. A. Cates, Frank Jones, G. W. York, J. P. Norris, E. C. Moss, J. F. Moss, S. M. Stephens, Otto Webb, L. G. Moffit, H. H. Wade.

Geo. R. Webster and Jos Brinkerhoff filed objections and remonstrances for Wenona Land Company and Transue Company Company and G. Wilson.

Chicago Mill and Lumber Company filed objections and remonstrance pro se, without attorney.

J. P. Black filed objections and remonstrance for G. P. Morris, W. F. Cooper, J. W. Smith.

And by agreement hearing as to J. P. Black's objection was continued to a time to be agreed upon by attorneys later.

Gordon Paterson filed objections for Alex & Ben Berger and Chas. Lee.

Also the following filed objections without attorney: Geo. Bostick, Bob Oliver, and G. W. Keen.

The Board of Directors of said Drainage District No. 7 through its attorneys then filed a demurrer and motion to dismiss as to all claims of all the foregoing objectors for alleged damages by the taking of their lands situated between Improvements 59, 60 and 61, or in the sunk lands of the St. Francis Lake, on the ground that this Court has no jurisdiction thereof in this proceeding.

After argument the demurrer was sustained by the Court and the said objections of all parties so situated were dismissed for want of jurisdiction, said persons being the following, to wit:

(Here follows list of many persons and the attorneys representing them.)

To the action of the Court in sustaining said demurrer and dismissing said objections of said parties the said parties through their attorneys excepted and prayed an appeal to the Circuit Court.

The objections and remonstrance of the St. Louis San Francisco Railway Company were overruled by the Court, and the Court finds that the revised assessment of benefits as against said railroad company to be fair and just and establishes the same to all of which said railroad company

except and prays an appeal to the Circuit Court, which is granted.

And the Court then adjourned over to June 5, 1922 at Nine o'clock A. M., at which time this hearing is to be continued.

And on June 5, 1922 at Nine o'clock A. M. court opened regularly, present and presiding same as yesterday and the hearing was continued.

The said Board of Directors in open court offered a revision of the revised assessment as to the entire incorporated town of Walled Tree, Arkansas, on account of clerical errors in the preparation of the revision as filed April 5, 1922, the said revised figures restoring the town of Walled Tree to the same basis as the assessment made in 1919 by said board and heretofore established with the following exceptions.

(Here follow certain exceptions not affecting this suit, and ruling as to two several objectors.)

[fol. 96] The Court then considered the objections of the several owners of property described below and found that the assessments were not uniform with assessment of surrounding and adjoining property and corrected such inequality by making the following adjustments, to wit:

(Here follows description of certain lands.)

And the Court further finds that as to each of said lots the reduction hereinafter mentioned of $[illegible] from the total assessment of benefits as herein equalized should apply and be extended by the clerk so that said lands after being so equalized will share in the general reduction hereinafter ordered and that the Clerk in extending said correction of assessments take into consideration the said $[illegible] reduction hereinafter ordered and deduct said $[illegible] from the total benefit assessment against each tract so hereinabove equalized.

Jacob B. Thomas, consulting engineer for the district was duly sworn and testified. The Board of Directors through their attorneys after a conference, then offered and reported to the Court their willingness to amend and modify the revised assessments filed April 5, 1922, by deducting from the assessment of benefits as shown in said book $[illegible]

upon each and every such assessment, excluding however, the property in the incorporated towns and excluding the amended assessment as to Market Tree.

The Board of Directors then rested and no further evidence was offered or introduced by anyone.

From all of which the Court finds: That the revision, change and modification of the plans of said district as filed April 5, 1922 in the Clerk's office has rendered inequitable [fol. 95] the former assessment of benefits and damages on the property in said district and in pursuance of their legal duty and authority the said Board of Directors proceeded to view the lands affected by such change of plans and found certain lands not heretofore assessed were benefited or damaged by the change and that benefits and damages to certain lands have become inequitable by reason of such revision of plans and duly filed on April 5, 1922 its book properly signed and certified showing such revised assessment of benefits and damages or re-assessment thereof on account of the change of plans of said district.

And the Court further finds that the incorporated towns are assessed justly and equitably both as to benefits or damages in the said revised assessment, excepting the specific change in the town of Market Tree, as hereinabove particularly set out, and that the said revised assessment as so amended should be confirmed, established and approved as to said incorporated towns, all as shown in the said revised assessment book.

And the Court further finds that as to all other lands and real property in said district, excepting that covered by previous portions of this judgment and excepting also as to particular tracts covered by separate judgments of this Court, and not being incorporated, the said revised assessment of benefits and damages, as filed on April 5, 1922 is fair, just and equitable in view of said change of plans, provided that [illegible] of the total revised assessment of benefits be deducted from each and every tract of land therein including those specially mentioned herein or by separate assessments, and also excluding the incorporated towns, as aforesaid; and that it [illegible] the assessment of [illegible] benefits shown as to each separate tract and parcel of land and each railroad and transmission within the said district should be established as a fair, just and equitable as-

assessment of the benefits and damages to the property of said district on account of said change of plans and that the Clerk should be authorized to make the necessary alterations upon the revised assessment book.

It is therefore considered, ordered, and adjudged by the Court: That all objections and remonstrances, excepting as heretofore granted by modifications of assessments, or as covered by separate orders and judgments of the Court be and the same are overruled and the said objectors saving their exceptions, the Court grants them the right of appeal to the Circuit Court on compliance with the statute for appeals, and as to such of the said objecting parties who may so appeal the said Board of Directors of Drainage District No. 7 is also given an appeal to the Circuit Court, upon compliance with the statute regulating appeals; that the assessment of benefits and damages in the incorporated town of Marked Tree be fixed as specifically set out in this judgment subject to rights of appeal as aforesaid.

That the revised assessment of benefits and damages upon all other incorporated towns of the said district be established and fixed at the amounts shown in the revised assessment book as filed by the Board with the County Clerk on April 5, 1922, subject to rights of appeal as aforesaid;

That the Clerk be and he is authorized to deduct from the total assessment of benefits as shown in the revised list filed April 5, 1922, 8% of the total thereof from the assessment on each and every separate railroad, tramroad, lot or parcel [fol. 99] of land outside of the towns and that such revised assessment list or re-assessment as filed April 5, 1922, less 8% upon each and every railroad, tramroad, lot and tract of land, excluding town lots, be and it is confirmed, fixed and established by the Court as the fair, just and equitable assessment of benefits upon all said lands, railroads, tramroads and as a fair re-adjustment and re-assessment thereof on account of the change and revision of plans filed by the Board on April 5, 1922, and the said revised assessment as so amended by the reduction of 8% be established as the assessment book of said district and kept and preserved by the County Clerk as a public record.

And it is further considered, ordered and adjudged by the Court, that the real property, railroads, tramroads, town lots and all other real estate in the said district be assessed for a tax sufficient to pay the estimated cost of the improvement in said district, payable in proportion to the amount of the assessment of benefits thereon in annual installments not to exceed 25% for any one year in manner and form to be hereafter more specifically provided and adjudged by this Court, and that the tax so levied shall be a lien upon all the real property of the district from the date of this order, and shall be entitled to preference over all demands, executions, encumbrances or liens whatsoever created, and shall continue until such assessment with any penalty and costs that may accrue thereon shall have been paid.

W. W. Warren, County Judge.

[fol. 180] It is stipulated that as to the question of adding the lands in the present controversy the minute book of Drainage District No. 7 shows the following minutes under the dates named:

Poinsett County D. D. 7—Minute Book I, page 44

"Meeting Held December 2d, 1917

"Pursuant to motion made and carried at meeting held December 22nd, 1917, the Board of Directors of Drainage District Number Seven (7) Poinsett County, Arkansas, met, two members being present, with Vice President, N. T. Whitaker, presiding and the following business transacted, to wit:

"Minutes meeting held December 22, 1917 read and approved.

"After discussion of letter received from attorneys Lamb and Frierson and Sloan, the Board instructed the Secretary to write to Pride and Fairly, Engineers, to Lamb, Frierson and Sloan, attorneys, and to Mr. Staterfield, attorney for Chicago Mill and Lumber Co., advising that the Directors of Drainage District Number Seven (7) Poinsett County, will consent to meeting of the above named parties with the Board to discuss the practicability of annexing certain lands in Poinsett County not now included in Drain

age District Number Seven (7) advising that Friday January 4th, 1918 at ten o'clock a. m., be fixed as date to meet in conference at the office of the Drainage District Room 8-10 & 12 of the Mitchell building, in Harrisburg, Arkansas.

"On motion J. G. Gant, seconded by C. M. Thompson, the meeting adjourned to meet Friday Jany. 4th, 1918 at ten o'clock, A. M.

[fol. 101] "Read and Approved January 4th, 1918.

C. M. Thompson, President. C. R. French, Secretary."

Poinsett County D. D. 7 Minute Book 1, Page 45

"Meeting Held Fridal Jany. 4th, 1918

"Pursuant to motion made and carried at meeting held December 29th, 1917 the Board of Directors of Drainage District Number Seven (7) Poinsett County, Arkansas, met, all members being present, with President C. M. Thompson, presiding, and present also the Secretary, attorneys and the engineers of the district.

"Mr. W. R. Satterfield and Mr. H. L. Finn were present, on behalf of Chicago Mill & Lumber Co., the Chapman Dewey Land Co., and other owners of land in Poinsett County between District Number Seven of Poinsett County and the County line of Mississippi County and north of the outlet of the ditches of District Number Nine of Mississippi County; and asked the consent of the board for the said landowners to present petition for annexation of such lands to their District Number Seven, with the understanding that such addition would not delay the filing of the reports and plans nor any other proceedings; and would not increase the cost to property owners in the present bounds of Drainage District Number Seven (7).

"Whereupon, after full discussion, on motion N. T. Whitaker, seconded by J. G. Gant, the following resolution was adopted: Resolved that it be the sense of this board, that if a majority in land value or number of landowners within Poinsett County east of the present boundaries of Drainage District Number Seven (7) and west of the Mississippi County line and north of the outlet ditches of Dis-
[fol. 102] trict Number Nine (9) of Mississippi County petition to be annexed to and included in this district, this

board will not oppose such annexation and consents to same; provided the cost to lands in the present district be not materially increased and that no delay ensue in the carrying out of the present plans of Drainage District Number Seven (7) on account of such contemplated annexation.

"Motion being duly put was unanimously carried.

"Thereupon on motion made and seconded and carried the meeting adjourned to meet again Saturday morning January 5th, 1918 at ten o'clock, a. m.

Read and approved Jany. 5th, 1918.

C. M. Thompson, President. C. R. French, Secretary."

Poinsett County D. D. 7—Minute Book, Page 60

(Excerpt from Minutes of Meeting of Board Held Februar 25, 1918)

"Chicago Mill & Lumber Co., E. Ritter, et al., by their attorneys, W. R. Satterfield and H. L. Finn, presented to and filed in the County Court the petition authorized at a previous meeting of the Board to be filed, praying that all of that portion of Poinsett County, lying east of the present boundary of Drainage District Number Seven, south of the Craighead County line, and west of the Mississippi County line; and north of the floodway and outlet of the Grassy Lake and Tyronza Drainage District Number 9, of Mississippi County, be added to and become a part of Drainage District Number Seven of Poinsett County, Arkansas, and be assessed and improved; and the county court fixed the 15th day of March, 1918, as the day for hearing said petition [fol. 103] and as an adjourned day of said court therefor, and entered an order so providing and directed the Clerk to publish notice accordingly."

It is further stipulated that neither party may introduce the records of foreclosue of delinquent assessment suits with decree, deed and approval of sale as to any particular case or tract without the necessity of formal identification thereof.

As to the Southeast quarter of Section 25, Twp. 12 N. Rge. 6 E, claimed by Alec Smith, it is submitted that final proof was submitted on January 28, 1918 and suspended in accordance with Circular No. 426 and that the Certificate

from the United States Land office, as hereinbefore mentioned may be filed by his attorney and become a part of the record.

It is further stipulated that as to the lands of Alex Smith and other lands in Township 12 North, Range 6 East, and all other lands within Drainage District, but not in Township 12 North, Range 7 East that an Act of Congress approved January 17, 1920 was passed under which the drainage district claims said lands were taxable.

Further, as to the lands of Alex Smith the following additional order appears of record in County Court Record —, page —:

[fol. 104]

Description of Tract	Sec.	Twp.	Rge	Contents, Acres	Rate Per Acre	Purchase Money
Lots 2 & 3 & S.½ N.W.¼	12			158.09		

Name of Purchaser	Date of Sale	Certificate	of Pat Purchase	entd	Final Certificate	Date of Patent	Recorded vol.	Page
Roy Rice, Lepanto	7-2-13	09729			2-14-19	6-3-19		

"This exhibit shows a large number of entries, final certificates and patents to lands in township 12 North, Range 7 East, involved in the controversy in addition to the specific tract involved, as follows:

1913— 37	Entries	1920— 0	Entries.
1914— 2	"	1921— 2	"
1915— 5	"	1922— 1	"
1916— 7	"	1923— 7	"
1917— 1	"	1924— 1	"
1918— 0	"	1925— 1	"

Final certificates were issued as follows:

On February 11, 1919	1
On February 14, 1919	27
On February 19, 1919	1
In April, 1919	5
Later in 1919	2
In 1920	8

In 1921	8
On March 16, 1922	1
In 1923	2
In 1924	1
In 1925	3

This exhibit shows patents issued as follows:

April 2, 1919	1
June 3, 1919	28
Later in 1919	11
In 1920	11
In 1921	4
All as early as March, 1922	5
In 1923	2
In 1924	1
In 1925	0

[fol. 105] In Chancery Court of Poinsett County

No. —

Roy Rice et al., Plaintiffs,

vs.

Drainage District No. 7, Poinsett County, Arkansas, Defendant

Stipulation re Testimony, etc.—Filed Sept. 18, 1926

It is stipulated by and between Arthur L. Adams and Jno. W. Scobey, attorney for the various plaintiffs who have brought suit to set aside the assessment of benefits, cancel deeds and recover taxes paid on lands in Township 12 North, Range 7 East, in Poinsett county, Arkansas, and Chas. D. Frierson, attorney for said Drainage District, defendant:

That the attorney, engineers, and the secretary and the directors of Drainage District No. 7, Poinsett county, who were in office during 1917 and 1918 and from the reorganization of the district till after the addition to said district of the lands in Township 12 North, Range 7 East, would

each and all testify substantially as follows regarding the method in which the lands embraced in Township 12 North, Range 7 East, were added to said Drainage District No. 7, to-wit:

That Drainage District No. 17, Mississippi county, and Drainage District No. 7, Poinsett county, were both created by special Acts of the General Assembly of Arkansas, in 1917; that about the same time two attorneys, Mr. Tellier and Mr. Finn, were attempting to organize the lands in the northeast part of Poinsett county lying between Drainage District No. 17 of Mississippi county and Drain-
[fol. 106] age District No. 7 of Poinsett county, together possibly with portions of Craighead county, into a drainage district under the general law.

Drainage District No. 17 filed its plans which would carry a great deal of water into Poinsett county more rapidly than ever before. Drainage District No. 7 of Poinsett county planned to protect the territory west of the St. Francis River and to drain that territory but made no provision for improvements east of the St. Francis River, and none for any lands in Township 12 North, Range 7 East.

Proceedings were actually filed by Tellier and Finn, as attorneys, for the organization of the middle district under the general law. However, on account of the lands lying in more than one county and of the expensive nature of the improvements, and the fact that the middle district would be compelled, under the statute, to ask Drainage District No. 7 for an outlet, it was impracticable to organize the said middle district.

Mr. Satterfield, attorney for the Chicago Mill & Lumber Company and some other land owners, was interested in obtaining drainage for that territory and in co-operation with Mr. Finn and Mr. Tellier, he decided it was better for the landowners of the territory between Drainage District No. 17 of Mississippi county and Drainage District No. 7 of Poinsett county to apply to be added to Drainage District No. 7. After some preliminary conversations, Mr. Satterfield discussed the matter with the attorneys of Drainage District No. 7 on December 28th, 1917, and the [fol. 107] attorneys immediately wrote to the directors and

to the secretary of Drainage District No. 7 the following letter:

Jonesboro, Arkansas, December 28, 1917.

Mr. C. R. French, Sec'y, Drainage Dist. #7, Harrisburg, Ark.

Dear Sir: Mr. Satterfield, attorney for the Chicago Mill & Lumber Company, has called on us with reference to the drainage of the territory just east of District Number 7, Poinsett county, and just west of District #17, in Mississippi county, the same territory concerning which Mr. Tellier and Mr. Finn have filed some proceedings to organize a drainage district.

By reason of the fact that the territory between the two big districts logically embraces portions of at least two counties, it will be difficult for the middle district to be organized, and when organized, as you know, the expense of drainage will be very large. Just north of the proposed drainage district and lying wholly within Craighead county is another proposed district which will drain down Mine Run Slough in a general way. This district has already been established, preliminary survey made, and it is ready for the final report of the engineers to the County Court of Craighead county.

Mr. Satterfield suggests that by permitting this Craighead County District already organized, to take charge of the drainage of all lands in Craighead county in that locality, the Poinsett county lands could logically be added to Drainage District #7, and could be covered by your plans. [fol. 108] This would add to your district all of the land in Poinsett county lying east of the present boundaries of your district and north of the floodway in District #9, Mississippi county, which floodway enters the St. Francis River, as you know, below Marked Tree.

Of course if the addition of this new territory will not delay the carrying out of your present plans and will result in no increased probability of a contest from landowners in the lower end of the district, it would be a very logical thing to do, as the drainage of the entire district is a single big proposition. Of course your engineers could readily see how much this would change the present plans, but our in-

formation is that the plans in effect, contemplate the possibility of additional territory, so that no delay nor trouble would ensue from that cause.

Mr. Satterfield admits that a very large percentage of the costs of draining this additional territory should be borne by District #17 and by the additional territory itself, since it would be to benefit that new territory and not particularly to benefit District #7 as at present planned. Mr. Satterfield desires to take these matters up with the board some time next week and we suggest that you fix a day and let us, and all of the engineers know what day you fix in order that we may go fully into the proposition.

We have told Mr. Satterfield that the idea of the commissioners as we understand it is to drain the territory just as quickly as possible, and adopt the best plans possible for [fol. 109] so doing, and that the commissioners are not likely to oppose any suggestions unless they would greatly increase the cost of the present district or cause delay, or increase the chances of opposition by other landowners. We are inclined to think that these propositions can be worked out satisfactorily by the engineers without delay and without increasing the costs or the chances of litigation.

Address Mr. Satterfield at 1317 Bank of Commerce & Trust Co. Bldg., Memphis, Tenn. Mr. Satterfield will also be authorized to speak on behalf of the Chapman Dewey Land Company.

We understand that Jacob A. Jorner, of Peoria, Ill., and Edmund T. Perkins of Chicago, consulting engineers, are now employed by Drainage District #17 in Mississippi county, and will proceed on December 28th to make a field inspection of District #17 and to check and inspect the plans for that district.

Yours very truly, ———.

F.B.

Copy to C. M. Thompson, J. G. Gant, N. T. Whitaker, Pride & Fairley.

In answer to this the Secretary of the board, C. R. French, on December 29th, 1917 notified W. R. Satterfield and the engineers and attorneys for the district that the board would meet with them on January 4, 1918.

Under date of December 31, 1917, Mr. W. R. Satterfield wrote to Mr. French, Secretary of the District, sending a copy to Lamb, Frierson & Sloan, attorneys for the district, and to Pride & Fairley, Engineers for the district, as follows, to wit:

[fol. 110] December 31, 1917.

Mr. C. R. French, Secretary Drainage District No. 7, Harrisburg, Ark.

Dear Sir: I wish to thank you for your letter of December 28th advising me that the officers of the drainage district will hold a meeting on Friday, January 4th, at 10 o'clock a. m., to discuss any drainage matters that might be referred to them on that date.

At this time, I expect to be present and will discuss with the directors, the matters which were the subject of Judge Frierson's letter, viz: The annexation to No. 7 of that territory in Poinsett county which lies between Drainage District No. 17 of Mississippi county and District No. 7 of Poinsett county.

I am mailing a copy of this letter to Lamb, Frierson & Sloan, at Jonesboro and Pride & Fairley at Osceola.

Yours truly, (W. R. Satterfield.)

Some one suggested after the conference of January 4th, that the plans for the improvement of the original territory of the district ought to be delayed and the Secretary, C. R. French, telephoned one of the attorneys for the district, Chas. D. Frierson, asking with reference to that feature, and the attorney wrote the following letter of date January 5, 1918, further discussing the agreement:

Jan. 5, 1918

Mr. C. R. French, Sec'y. Mr. C. M. Thompson, Pres't, Drainage District #7, Harrisburg, Ark.

[fol. 111] Gentlemen: Regarding telephone conversation with Mr. French this morning: The distinct understanding with Mr. Satterfield was that nothing should delay the filing of our report and proceeding with the district as at present planned. The petition of these people outside of the district has not been presented and may never be pre-

sented, and the board should go ahead with the present plans just as if no proposition had been made by Mr. Satterfield. The engineers assured us that there would be no change in the plans of number 7 on account of the added territory if it ever is added, but that the change will occur in the plans of district No. 17 of Mississippi county. If we delayed the filing of the plans then these people would have secured a delay in the organization of the district which they do not even ask for. We think, by all means, we should proceed just as though no additional petitions were in sight, and there is no probability of any opening being left for attack by this method. There is nothing of which the board can take cognizance officially regarding the additional territory at present, and may never be.

We think that the present plans should be filed and shoved through without delay, because we are definitely informed that the concern of which Mr. Diamant is manager and Mr. Webster attorney will begin to fight us at an early date and we want to precipitate the contest with them so that they cannot delay us later when a delay would be more annoying.

Unless notified to the contrary (and we hope we will not be) we will try to cooperate with the engineers to get a report ready next week, and then proceed with the filing of [fol. 112] the necessary documents in the county court.

Very truly yours, (Chas. D. Frierson.)

F B.

On January 8th, 1918, Mr. Satterfield and several of the largest landowners in the territory sought to be added met with C. M. Thompson, Chairman, C. R. French, Secretary, Mr. H. L. Finn also being present, and immediately thereafter Mr. Satterfield drafted the form for the petitions for annexation of the territory and mailed a copy of the same with the following letter of date January 9th, 1918, to the attorneys for the district:

Memphis, Tenn., January 9th, 1924.

Minutes of Judge Wm. M. Thomas

Lamb, Thomas & Wood, Knoxville, Tenn.

Gentlemen:

Re re proposed annexation to Bo Bo No 7

Mr. Thompson, the Chairman, Mr. Finch, the Secretary, Mr. Fox and myself, met several of the property holders in Walnut Vue and the surrounding territory at Walnut Vue yesterday. We found them favorable in favor of the annexation, and all agreed that that part of the territory South of the ditches in Drainage District No 7 of Shelby county, and lying between Districts 17 and 7 and should be annexed.

I should have stated that Mr. Finch was also present and explained at some length the plans which they had in mind for relieving the drainage territory, as well as the proposed plans for No 7.

I have drafted the form for the petition and hand you a copy of the same. Mr. Thompson requested that a copy with your approval as to form be filed with the Board of No 7. I enclose copy for that purpose.

If the form enclosed meets with your approval, kindly advise of that fact, and I will immediately place the copy in the hands of several parties to be circulated. I feel like there will be no trouble in securing all those necessary, at least the majority in both value and acreage.

Yours truly, (Signed) W. M. Thomas

Thereafter, pursuant to the understanding, the petition for the annexation of the territory now involved in this suit were presented to the county court, as shown by the stipulation in this record, a day was fixed and the order of annexation rendered and all of this was done without the said Drainage District No. 7, or its officers, agents, engineers or attorneys taking any part in the annexation proceedings.

The sole object to which Drainage District No. 7 participated in the court proceedings for the annexation of the territory was that their attorney appeared in the county

court and orally stated to the court that Heritage Bottling Co. [illegible] would not object to the addition of said territory if the taxpayers desired their lands added.

[illegible] Witness our hands this May 10, 1958.

[illegible], Notary Public for Jackson [illegible], Notary Public for Plaintiffs. [illegible], for Defendant.

[File endorsement omitted.]

[illegible]

[illegible] In Chancery Court of Pinnacle County

Proceedings in Chancery. Filed April 10, 1958.

In the case of [illegible] and various other plaintiffs against Heritage Bottling Co. [illegible], Defendant, regarding the annexation of lands to lands alleged to have been theretofore [illegible], it is further stipulated by and between the parties that the report of the Board of Directors of Heritage Bottling Co. [illegible] upon the feasibility and allocation of plans dated April 8, 1953, and filed April 9, 1953, with the County Clerk of Pinnacle County and in the words and figures as follows, to-wit:

In the Chancery Court of Pinnacle County, Arkansas

In the Matter of Change of Plan of Heritage Bottling Co. [illegible], Pinnacle County, Ark.

Report of the Board of Directors

To the Honorable Chancery Court of Pinnacle County, Arkansas:

The undersigned, Board of Directors of Heritage Bottling Co. [illegible] of Pinnacle County, Arkansas, respectfully report that on account of the inability to secure connections from the [illegible] Reservoir to wells and the plans heretofore filed for the construction of lines for the diversion of the Mt. Pinnacle River and for the further reason that Mt. [illegible] Water Co. [illegible] the right upon the Mt. [illegible] to an adequate water supply, and to use the water [illegible] the terms of [illegible] by the Environmental Board

the changed plans so ... to make the whole assessment equitable.

Wherefore the Board of Directors pray that the amended, altered and modified plan be approved and that the court order the Clerk of the Court to publish a notice of the filing of said modified plan as provided by Special Act of the General Assembly of Arkansas, at Extraordinary session of 1920.

Witness our hands this 4th day of April, 1922.

Board of Directors of Drainage District No. 7, Poinsett County, Arkansas, by C. M. Thompson, N. T. Whitaker, J. M. Hunt, W. W. Hazel, H. Curtis Bowry, W. E. Payne.

Attest: C. E. French, Secretary. (Seal.)

Filed April 5, 1922. Chas. J. Mitchell, Clerk.

(3d 128) That accompanying said report was the following report of the engineers of said district dated March 28, 1922, made to the said Board of Directors and filed with the Board of Directors on April 4, 1922, to wit:

March 28, 1922.

Report of Engineers to the Honorable Board of Directors Drainage District No. 7, Poinsett County, Arkansas

In the Matter of Drainage District No. 7, Poinsett County, Ark.

We, Jos. F. Pride and R. M. Farley, a co-partnership as Pride & Farley, Engineers for Drainage District No. 7, Poinsett county, Arkansas, respectfully report that,

Acting under the direction of the Board we have found it necessary and desirable that certain alterations and amendments be made to the plans of the aforesaid district, and that certain improvements be added to or taken from said plans.

These changes are due to two events which have transpired since our report of May 28, 1919, and also to a purpose to give more effective drainage to the district.

In order to carry out the plan described in the report of May 28, 1919, it would be necessary to divert the waters

of the St. Francis River by means of a levee. Consequently, on July 11, 1919, the Directors made application to the Engineers of the U. S. War Department for permission to build a diversion levee across the St. Francis River at the lower end of St. Francis Lake in Section 10, Township 11 North, Range 6 East, in accordance with our report of May 21, 1919. On August 13, 1919 the Chief of Engineers, [fol. 119] U. S. War Department, declined to grant such permission. Not being permitted to build the levee, the plan of May 21, 1919 cannot be carried out, therefore it has become necessary to provide other means of protection and to amend the plans so as to satisfy the U. S. Engineers that the works will not interfere with navigation in the St. Francis River.

Since the filing of our report of May 21, 1919 a law has been enacted by the Congress of the United States permitting the taxation of certain Government Lands within the District, which may be profitably reclaimed, but which have heretofore been omitted from the plan on account of the impossibility to enforce collection of the taxes necessary to pay for the reclamation. The bill referred to was approved by the President January 17, 1920, and is now effective. We wish to advise that the reclamation of these Government lands is somewhat more expensive per acre than any of the other lands within the district, and to suggest that on account of their topographical situation and present subjection to frequent and prolonged overflow they will be benefited more than any other lands within the district.

The two essentials in the reclamation of the lands in Drainage District No. 7 are the control of the floodwaters of the St. Francis River and Little River and providing the necessary ditches to carry off the drainage water.

The channel of the St. Francis River from the foot of St. Francis Lake to the south line of Poinsett county is not large enough to carry the floods, and would not be even if levees of reasonable height were constructed along its [fol. 120] banks. Furthermore, if the river were leveed to the flood plane of the river would be raised to such an extent as to defeat local gravity drainage and would require a number of large pumping plants, which may be avoided by carrying out the floodway plan described herein.

In this altered or amended plan levees will be constructed down both sides of the St. Francis Lake and a floodway down Sand Slough, which is the most economical plan of controlling the floods. A lock and the necessary gates and controlling devices will be installed at the foot of St. Francis Lake. By controlling the floods in this way the present highwater flood plane in the St. Francis River from the foot of the lake southward will be lowered several feet. This will give local drainage to the lands along the river. In addition it will give an outlet to the Left Hand Chute of Little River which drains the greater portion of the eastern side of the district, and which brings the water into the District, from a large area in northeast Arkansas. Unless the water in St. Francis River at the mouth of Left Hand Chute of Little River is lowered several feet below the present flood plane, the water brought into the District by the Left Hand Chute will cause serious damage to the whole eastern part of the District.

A large number of lateral ditches have been added to the plan and a large number of lateral ditches already in the plan have been extended. These changes will give more complete and efficient drainage to the entire district.

The assessment roll heretofore filed did not cover the full measure of the benefit to the lands of the district and with the altered and enlarged plan the benefits to the lands [fol. 121] in the district will be very much greater than shown on the assessment roll heretofore approved by the court.

In order that your Honorable Board may more clearly understand the amended plans for the reclamation of the lands of the District, we call your attention to the following general description, and the map marked Exhibit "A" to this report.

As stated above, the control of the St. Francis River floods will be accomplished by the building of levees located along both sides of St. Francis Lake; one starting at the Craighead Poinsett County line and going in a southerly direction along the western edge of St. Francis Lake to a junction with the west side of Sand Slough, the said levee being shown as Improvement No. 60, on the accompanying map, Exhibit "A"; the other levee starting at

the Craighead Poinsett County line on the east side of St. Francis Lake and going in a southerly direction to the south end of the Lake, and thence west to a junction with the east side of Sand Slough. These levees will prevent the floodwaters of St. Francis River from spreading over the adjacent territory. The floodwaters will then be conducted down Sand Slough between two levees spaced about 2500 feet apart and will re-enter the River near Cross County line in Section 25, Township 10 North, Range 5 East.

The lock and water control gates previously referred to will be constructed at the junction of Improvement No. 61, with the St. Francis River. They will be of a size approved by the U. S. War Department. All advantageous features of navigation in the river will be preserved by operating [fol. 122] the gates in such a way as to permit the ordinary flow of the St. Francis River to pass through the present channel, and by reason of storage under control in St. Francis Lake to regulate the low water flow in the River below the Lake.

With the construction of the improvements just described the floodwaters of the St. Francis River will be controlled and carried several miles, and delivered back into the St. Francis River without interfering with the navigability of the stream.

Drainage District No. 17 of Mississippi County, Ark., is completing levees which will confine the floodwaters of Little River to a floodway located along Right Hand Chute. These levees being constructed by Drainage District No. 17 and at the west line of Section 29, Township 12 North, Range 7 East. The plans of Drainage District No. 7, Poinsett County, provide for extending these levees down Right Hand Chute to the east side of the St. Francis Lake and the waters of Little River will be delivered into St. Francis Lake and controlled by the levees around the Lake and down Sand Slough.

In order to provide an outlet for the drainage water coming into the northeast part of the District from Drainage Districts in Craighead and Mississippi counties, a culvert is provided to take the water under Right Hand Chute floodway and channel and deliver it through a short ditch, shown as Improvement No. 63, into Left Hand Chute of Little River in Section 22, Township 12 North, Range

7 East. The water will then flow down Left Hand Chute to an outlet in the St. Francis River just above Marked Tree. [fol. 123] Under conditions as originally existing the Lef-Hand Chute of Little River received the major portion of the water of the entire Little River watershed. With the completion of the works of Drainage District No. 17, of Mississippi county, Ark., the watershed tributary to this stream will be only a small part of its former area, and will consist of lands which are comparatively flat. After the completion of the levees around the lake and down Sand Slough the flood plane of the St. Francis River at the mouth of Lef- Hand Slough will be several feet lower than under existing conditions, and Left Hand Chute will have a good outlet. Left Hand Chute will be improvesl whenever necessary, taking out trees and debris and deepening the channel thru the bars. The channels of Left Hand Chute of the Little River and the St. Francis River below the Lake will then serve as the main drainage channels for all the local drainage of the adjacent territory.

In order to provide at all times an ample outlet for the very low land immediately east of the St. Francis Lake and North of Right Hand Chute a pumping plant is provided.

In the western portion of the district Improvement No. 1 is a main drainage channel going in a southerly direction from the Craighead Poinsett County line south along the east side of Crowley's Ridge, to a point about three miles south of the Poinsett-Cross County line, to an outlet in Big Bay. This ditch will give detailed drainage to the territory on the west side of it, and will be so constructed that a solid waste bank on the east side of the ditch will prevent the drainage water from Crowley's Ridge from flooding the lower lands on the east of Improvement No. 1. [fol. 124] Improvement No. 10 is the main drain for the western portion of the District. It will serve as an outlet for the ditches of Craighead county which discharge their water into the northwest corner of the district and will carry this water thru the western portion of the district and deliver it into Big Bay at a point about 3 miles south of the Poinsett-Cross County line.

Improvements Nos. 11, 12, 23 and 35 will act as collecting ditches for the lateral system of the territory west of St. Francis Lake and west of Sand Slough and will deliver the water into Improvement No. 10.

Improvement No. 41 will act as a collecting ditch for the laterals between Sand Slough and the St. Francis River, and will deliver the water into the St. Francis River channel near the south end of the district.

In the territory to the west of St. Francis River, which has a more or less uniform slope from north to south, the lateral ditches have been located about 1 mile apart and on the section or half section lines. Most of the ditches run east and west, and the others run north and south.

In the territory to the east of St. Francis River, due to the fact that the topography of the ground is more irregular and full of deep depressions, the lateral ditches have been located according to the elevation of the ground rather than according to the section lines. Ditches have been located in every low area of any magnitude, and the entire area of the district is given good drainage outlet so that it will require only small farm ditches to give detailed drainage to all lands. We find that with the amended plan as [fol. 125] recommended herein, the territory within the district, including the government lands hereinabove referred to, will be reclaimed and will be susceptible to a very high state of cultivation and that the value thereof will be enhanced more than the amount of benefit heretofore approved by the court, that the health of the inhabitants of said territory will be improved and that the drainage and improvement of said territory will result in a very great benefit to said lands.

We further find that as to all railroads, tramroads and public roads in the entire territory aforesaid, the drainage planned will result in greater benefit than heretofore approved by the Court, as it will remove from the roadbed floodwaters which render it difficult to maintain said roads.

We further report that the entire territory embraced within the district, each and every tract thereof, will be benefited by the proposed improvement, excepting only the lands in St. Francis Lake and the floodways bounded by Improvements Numbers 60, 59 and 61.

Your engineers recommend and propose as the most economical and adequate means of drainage, reclamation and improvement of the entire district, the construction of the various improvements embraced in their report of May 21, 1919 as amended, altered, added to or taken from by the recommendations contained and described in Exhibit "B" to this report, hereto attached as a part of their plans, each improvement being designated by a number corresponding to the number upon the map, filed as a part of the plan as Exhibit "A" above referred to. The said Exhibits "A" [fol. 126] and "B" are hereby made parts of this report as fully as though set out herein.

This 28th day of March, 1922.

Respectfully submitted.

Pride & Fairley, Engineers, by O. M. Fairley.

Filed with the Secretary of the Board of Directors, Drainage District No. 7, on this the 4th day of April, 1922.

C. R. French, Secretary.

There was also filed by the Board on May 31, 1922, the following supplemental explanatory report, to wit:

IN THE COUNTY COURT OF POINSETT COUNTY

In the Matter of Amended and Revised Plans of Drainage District No. 7, Poinsett County, as Filed April 5, 1922

The Board of Directors of Drainage District No. 7, herewith files a supplemental and explanatory note by its engineers to accompany the report of said engineers, and said board heretofore filed on April 5, 1922, and respectfully states:

That numbers and descriptions of improvements are based upon the plans filed with the Clerk of the County Court on May 24, 1919, as amended and revised by the plans filed April 5, 1922, and that the plans filed on October 30, 1920, are no longer in effect.

Respectfully submitted.

Drainage District No. 7, Poinsett County, Arkansas, by C. M. Thompson.

[fol. 127] N. T. Whitaker, J. C. Gant, M. W. Hazel, H. Curtis Dewey, W. R. Payne, Directors.

Attest: C. R. French. (Seal.)

Filed May 31, 1922. Chas. J. Mitchell, Clerk.

Accompanying the said explanatory report is the following report to the board by the engineers, to-wit:

To the Honorable Board of Directors Drainage District Seven, Poinsett County:

We, Joe P. Pride and O. M. Fairley, partners as Pride & Fairley, engineers for Drainage District No. 7, desire to add the following explanatory note to our report filed with the board on April 4, 1922, to-wit:

That the report filed with the Clerk on October 30, 1920 has been disregarded and superseded by our report of April 4, 1922.

Numbers and descriptions of improvements are now based upon the report filed with the Clerk May 24, 1919 and the report filed with the Clerk April 5, 1922.

Respectfully submitted.

Pride & Fairley, Engineers, by O. M. Fairley.

On April 5, 1922 the said Board reported to the County [fol. 128] Court of Poinsett County, as follows, to-wit:

In the County Court of Poinsett County, Arkansas

In the matter of the Revised Assessments Upon Lands in Drainage District No. 7, Made Necessary by Report of Revised, Altered, and Amended Plans Filed April 5, 1922

Report to the County Court Accompanying Revised Assessment List

To the Honorable County Court of Poinsett County, Arkansas:

The Board of Directors of Drainage District No. 7, Poinsett County, Arkansas, herewith present its assessment book of benefits and of damages to lands in the said district, the existing assessment of which has been rendered

inequitable by reason of the changes in the plans of improvements of said district as filed with the County Clerk April 5, 1922. In view of the said change of plans the Board of Directors has viewed the lands affected thereby and finds that said lands not heretofore assessed have been benefited or damaged and that the benefits or damages to lands heretofore assessed have become inequitable on account of such change of plans and have assessed or reassessed the benefits or damages to said lands affected in either way and to the said assessment book they have attached their caption and certificate reciting the making of said assessment or re-assessment in the manner set out in Section 9 of the Act creating said district approved in 1917.

The said Board therefore asks that this Court fix an adjourned day for the hearing upon said re-assessment of benefits and of damages and direct the Clerk of this Court [fol. 129] to give notice of the filing of said re-assessment or revised assessment by publication for two weeks in some weekly newspaper issued in Poinsett County, Arkansas, giving a description of the land assessed in such large tracts as the description will permit and notifying landowners that said lands have been assessed or the existing assessment thereon modified on account of the said change of plans and that any landowner who deems himself aggrieved by said revised assessment of benefits or damages or deems that the assessment of any lands in the district is inadequate shall present his complaint to this Court at the said hearing which shall be fixed not less than ten days after the completion of the two weeks publication and that this Court by its judgment approve and confirm the said revised assessment list of benefits and damages; and the said Board asks that the assessment book, caption and certificate be considered as an exhibit to this report and as a part thereof.

Witness our hands and the seal of said district this April 5, 1922.

C. M. Thompson, N. T. Whitaker, J. G. Gant, M. W. Hazel, H. Curtis Dewey, W. R. Payne, Board of Directors of Drainage District No. 7, Poinsett County, Arkansas. (Seal.)

Filed April 5, 1922. Chas. J. Mitchell, Clerk.

Accompanying said report was the assessment book therein referred to modifying the assessment upon all the lands in the district, excepting the town lots.

[fol. 130] The notice of the modification of the plans dated April 5, 1922, is as follows, to wit:

In the Matter of Revision and Alteration of Plans of Drainage District Number Seven of Poinsett County, Arkansas, Under Report of Board Filed April 5, 1922

Notice to Landowners

Notice is hereby given that the Board of Directors of Drainage District No. 7, of Poinsett County, Arkansas, has filed in the office of the Clerk of the County Court of Poinsett County its report, accompanied by the reports of its engineers, together with maps, plans, estimate of cost and description of right of way required, showing certain changes, alterations and modifications in the plans for the said improvements proposed, with the width and depth of proposed ditches and a general description of the work and structures proposed; and that the said Board of Directors intends to proceed with the construction in accordance with the said changed plans.

Witness my hand as Clerk and the seal of said Court this April 5, 1922.

Chas. J. Mitchell, Clerk County Court, Poinsett County. (Seal.)

The notice of the revised assessment of benefits and damages in accordance with the changed plans filed April 5, 1922, is as follows, to wit:

[fol. 131] In re Drainage District No. 7, Poinsett County, Arkansas

Notice of Revised Assessments of Benefits and Damages in Accordance With the Changed Plans Filed on April 5, 1922

Notice is hereby given that the Board of Directors of Drainage District No. 7, Poinsett County, Arkansas, has filed a report showing certain changes, alterations, amend-

ments and modifications of plans for the work of said district, and also filed a report showing that the board has viewed the lands affected by such change of plans and that certain lands not heretofore assessed have been benefited or damaged by such change of plans, and that the benefits and damages to certain lands heretofore assessed have become inequitable by reason of such amendment, alteration and modification of plans for the improvements in said district, and that the said board has filed its assessment book showing a revision and re-assessment of benefits and damages to all such lands, railroads, tramroads and town lots within the said district, as follows, to wit:

(Here follows description of many tracts of land including that directly in controversy in this litigation.)

The same being all the land described in the original Act of 1917 and amendatory Act No. 75 of 1919.

Said assessment book being filed on April 5, 1922 and upon the said report the county court of Poinsett County at the request of said Board of Directors on the 6th day of April, 1922, entered an order fixing the 31st day of May, 1922, as a regular adjourned day of the said court for the [fol. 132] hearing upon said revised and modified assessments and the said court thereupon directed the Clerk to publish this notice inviting the filing of said assessment and said date of hearing.

And in pursuance of said order of the county court notice is hereby given that any landowner who deems himself aggrieved by said assessment or re-assessment of benefits or damages or deems that the assessment of any land in the district is inadequate, may appear on said May 31, 1922, the adjourned day of said county court fixed for the hearing and present his complaint to the county court and on said day the Court will consider the same and will consider the revised assessment of benefits or damages and make its finding thereon in accordance with the Act creating said district and enter an order regarding said assessment.

[illegible]

[illegible]

[illegible]

The unfinished work is as follows:

	East of lake and floodway	West of lake and floodway
Improvement #40		$22,000.00
Levee work on the Cross Country line just west of the floodway		10,000.00
Uncompleted work at Ash Camp	$16,000.00	
Uncompleted work on Imp. 64 (Little River)	20,000.00	
Construction of Pumping Plant at Riverdale	100,000.00	
	$136,000.00	$32,000.00

I believe this covers the ground in your letters.

Very truly yours, Pride & Fairley, by O. M. Fairley.

Original and three copies to C. D. Frierson. One copy of H. C. Dewey, President.

[fol. 136] In County Court Record "H," pp. 407-409, appears the following order entered on July 12th, 1918:

In the Matter of Drainage District Number Seven of Poinsett County

Now, on this 12th day of July, 1918, come N. T. Whitaker, J. G. Gant and C. M. Thompson, Directors of Drainage District Number Seven, of Poinsett County, in the State of Arkansas, by their attorney Lamb & Frierson and call upon the County Court of Poinsett County, Arkansas, to enter of record its order levying a tax upon the real property, including lands, railroads and tramroads within said district, sufficient to pay the cost of the proposed improvement including the interest on the bonds plus ten per cent for contingencies; and the said Directors further petition this Court that the said tax be divided into certain installments and in order to hasten the work for which the drainage district was organized, the bonds of said district in the amount of One Million Four Hundred Thousand Dollars ($1,400,000.00) be authorized and ordered to be issued, and that sufficient provisions be made to secure the payment of the principal and interest on the same, and upon due consideration of said petition together with oral and documentary evidence, this court finds:

A. That the assessment of benefits upon the real property including lands, railroads and tramroads in said district, amount in the aggregate to the sum of $3,314,865.67, which bears interest at at six per cent per annum.

B. It is therefore considered, ordered and adjudged that there shall be and is hereby assessed upon the real prop- [fol. 137] erty, including lands, railroads and tramroads within said Drainage District, a tax sufficient to produce the sum of $2,824,277.50, being the estimated cost of the improvement, including the interest on the bonds plus ten per cent for contingencies, and also a small additional sum annually for current expenses. The said tax shall be paid by the real property in the district, including lands, railroads and tramroads within said district, in proportion to the amount of the assessment of benefits thereon.

C. It is further considered, ordered and adjudged that the said tax hereinbefore assessed shall be divided into installments, and that the said installments shall be due and payable as follows:

(Here is set out for the several years 1919-1922, both inclusive, payments of 2.4% of assessed benefits producing each of said years $79,556.77; and for the several years 1923-1942, both inclusive, payments of 3.8% of assessed benefits producing each of said years $125,964.89.)

The said installments shall be annually extended upon the tax books of the county and collected by the County Collector *which* other taxes between the first Monday in January and the 10th day of April of each year, and the proceeds of the same shall be by the collector paid over to the County Treasurer, or the depository of the district for the use of Drainage District Number Seven, Poinsett County, as hereinafter provided.

D. It is further considered, ordered and adjudged that the Board of Directors of said Drainage District Number Seven be and it is hereby authorized and empowered, di- [fol. 138] rected and ordered to issue the bonds of said district in the sum of One Million Four Hundred Thousand Dollars, ($1,400,000.00), and to secure the same by a pledge of the revenues of said district.

Said bonds shall be dated January 1st, 1918, bearing interest at the rate of five per cent per annum, payable as follows:

(Here appears detailed tabulation of bonds with amounts of principal and interest maturing each year for the years 1918 to 1942 inclusive.)

E. It is further considered, ordered and adjudged that in order to meet the interest upon the said bonds and pay the principal thereof as it matures, there is hereby appropriated for that purpose and set aside out of the first moneys received from the collection of each installment of the said tax assessed against the real property, including lands, railroads and tramroads within said drainage district a sum sufficient to pay the interest and principal of the bond issue maturing during the year in which that installment of the said tax is due and payable in accordance with and as shown in the schedule hereinbefore set out, or any bonds and coupons that may have already matured and yet remain unpaid.

F. It is further considered, ordered and adjudged that no part of the funds arising from the collection of any of the said installments shall be applied or used for any other purpose than the payment of the interest and principal of the said bonds until there has been deposited with the Chase National Bank in the City of New York, N. Y., an amount sufficient to pay the interest and principal matur- [fol. 139] ing during the year in which the installment is due and payable as well as all other bonds and coupons already matured and remaining unpaid.

G. It is further considered, ordered and adjudged that any money remaining out of the proceeds of an installment of the tax after provision for the payment of the interest and principal of the bonds has been made as hereinbefore provided may be used by the Board of Directors of said drainage district for the purpose of meeting administration expenses and maintaining the drainage system.

H. It is further considered, ordered and adjudged that in case funds are required or needed by the said drainage district for any purpose other than the payment of the interest and principal of said bonds (except for administra-

tion and maintenance as hereinbefore provided), the funds shall be raised by an additional tax levy; and in no event shall there be made any levy or levies that will in any manner or to any extent impair the security of said bonds which are and at all times shall be a first lien upon the assessment of benefits and the taxes levied within said drainage district.

(Signed) S. T. Mayo, Judge.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 140] In Poinsett County Record "H," Poinsett County, Arkansas, July term, September 1st, 1919, pp. 538-539:

In the Matter of Drainage District Number Seven of Poinsett County, in State *State* of Arkansas

Now, on this 1st day of September, 1919, come N. T. Whitaker, J. G. Gant and C. M. Thompson, Commissioners of Drainage District Number Seven of Poinsett County, in the State of Arkansas, by their attorney, Chas. D. Frierson, and call upon the county court of Poinsett County, Arkansas, to enter of record its order levying a tax upon the real property, including lands, railroads and tramroads within said district, sufficient to pay the cost of the proposed improvements including the interest on the bonds plus ten per cent for contingencies; and the said commissioners further petition this Court that the said tax be divided into certain installments and that in anticipation of the collection of said installments and in order to hasten the work for which the Drainage District was organized, the bonds of said district in the amount of Two Million Two Hundred Thousand Dollars ($2,200,000.00) be authorized and ordered to be issued, and that sufficient provisions be made to secure the payment of the principal and interest of the same, and upon due consideration of said petition together with oral and documentary evidence, this Court finds:

A. That the assessments of benefits upon the real property including lands, railroads and tramroads, in said district, amounts in the aggregate to the sum of $4,743,807.50, which bears interest at six per cent per annum.

(fol. 141) B. It is further therefore, considered, ordered and adjudged that there shall be and is hereby assessed upon the real property including lands, railroads and tramroads within said Drainage District, a tax sufficient to produce the sum of $7,871,352.50, being the estimated cost of the improvements, including the interest on the bonds plus ten per cent for contingencies, and also a small additional sum annually for current expenses. The said tax shall be paid by the real property in the district, including lands, railroads and tramroads in said district, in proportion to the amount of the assessment of benefits, thereon.

C. It is further considered, ordered and adjudged that the said tax hereinbefore assessed shall be divided into installments, and that the said installments shall be due and payable as follows:

In each of the years 1920 to 1928, inclusive, 4.5 per cent of the assessed benefits, producing $213,471.52;

In each of the years 1929 to 1949, inclusive, 7 per cent of the assessed benefits producing $332,006.50; said collections to be credited first upon the interest accruing upon said assessment of benefits.

The said installments shall be annually extended upon the tax books of the county and collected by the County Collector with other taxes between the first Monday in January and the 10th day of April of each year, beginning with the year 1920, and the proceeds of the same shall be by the collector paid over to the County Treasurer, or the depository of the District, for the use of Drainage District Number Seven, as hereinafter provided.

(fol. 142) D. It is further considered, ordered and adjudged that the Board of Commissioners of the Drainage District be and it is hereby authorized and empowered, directed and ordered to issue the bonds of said District in the sum of Two Million Two Hundred Thousand Dollars ($2,200,000.00) and to secure the same by a pledge of the revenues of said district.

Said bonds shall be dated August 1, 1919, bear interest at the rate of five per cent per annum, payable semi-annually, the principal to be payable as follows:

(Here appears tabulation of this bond issue, showing amounts of principal due each year from August 1, 1929, to August 1, 1949, both inclusive.)

E. It is further considered, ordered and adjudged that in order to meet the interest upon the said bonds and pay the principal thereof as it matures, there is hereby appropriated for that purpose and set aside out of the first moneys received from the collection of each installment of the said tax assessment against the real property, including lands, railroads and tramroads within said drainage district a sum sufficient to pay the interest and principal of the bond issues, maturing during the year in which that installment of the said tax is due and payable in accordance with and as shown in the schedule hereinbefore set out, or any bonds and coupons that may have already matured and yet remain unpaid.

F. It is further considered, ordered and adjudged that no part of the funds arising from the collection of any of the said installments shall be applied or used for any other purpose than the payment of the interest and principal of the said bonds until there has been deposited with the [fol. 143] Chase National Bank in the City of New York, and State of New York, an amount sufficient to pay the principal and interest maturing during the year in which the installment is due and payable as well as all other bonds and coupons already maturing and remaining unpaid.

G. It is further considered, ordered and adjudged that any moneys remaining out of the proceeds of an installment of the tax after provision for the payment of the interest and principal of the bonds has been made as hereinbefore provided, may be used by the Board of Commissioners of said Drainage District for the purpose of meeting administration expenses and maintaining the drainage system.

H. It is further considered, ordered and adjudged that in case funds are required or needed by the said Drainage District for any purpose other than the payment of the interest and principal of said bonds (except for administration and maintenance as hereinbefore provided), said funds shall be raised by an addition tax levy; and in no event shall there be made any levy or levies that will in any manner or to any extent impair the security of said bonds,

which are and at all times shall be a first lien upon the assessment of benefits and the taxes levied within said drainage district.

I. This order shall supersede the order levying a tax on the lands, railroads and tramroads in the district, made on the 12th day of July, 1918, and recorded in County Court Record "H" at page 407.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 144] Drainage District Number Seven (7), Poinsett County, Arkansas (Organized under Act 193 in the Year 1917, Approved March 9th, 1917

List of Bonds Issued in the Above District Dates, Date of Issuing, Rate of Interest, Maturity etc.

In County Court Record "H" on page 408, on the 12th day of July, 1918 is listed the first bond issue $1,400,000.00, bonds dated January 1st, 1918, bearing interest at the rate of 5% per annum payable semi-annually, principal and interest to be paid as follows:

(Here appears tabulation of bonds, showing principal and interest payments each year, for the years 1918 to 1942, both inclusive.)

At County Court record "H" at page 539, on September 1st, 1919, is an additional bond issue of $2,200,000.00, said bonds are dated August 1st, 1919, and bear interest at the rate of 5% per cent per annum payable semi-annual. No tabulation is shown as to the interest payment but principals is payable as follows:

(Here appears tabulation of bonds, with principal payments each year for the years 1929 to 1949, both inclusive.)

At County Court Record Book "I" at page 272 is an additional bond issue of $1,440,000.00, said bonds are dated February 1st, 1923, bearing 5½% per cent semi annual interest. No tabulation is shown as to maturities of interest but the principal is payable as follows:

(Here appears tabulation of bonds showing installments of principal due August 1, each year, for the years 1929 to 1949, both inclusive.)

[fol. 145] At County Court Record "I" at page 279, is an additional issue of $183,500.00 in bonds, said bonds are dated February 1st, 1923, and bear 5½% per cent semi-annually interest. There is no tabulation of the interest but the principal is payable as follows:

(Here appears tabulation showing payments on August 4 of each year, for the years 1929 to 1943, both inclusive.)

At County Court Record "I" at page 402 is an additional issue of $150,000.00, said bonds are dated December 1st, 1924, and bear 5½ per cent interest semi-annually. There is no tabulation of the interest but bonds are payable as follows:

(Here follows tabulation of Bonds, showing payments on August 1st, of each year, beginning 1934 to 1949, both inclusive.)

The total assest benefits on this issue is $5,937,922.00 and tax payment are based on the assest benefit as follows:

1925 to 1928, Incl., 6.5% of benefits producing $385,964.93.
1929 to 1937, Incl., 7.3% of benefits producing $433,468.30.
1938 to 1942, Incl., 7.2% of benefits producing $427,530.00.
1943 to 1949, Incl., 6.6% of benefits producing $391,982.85.

The above rates vary for the years 1926 to 1927 by reason of a mandamus and for the years 1926 and 1927, 7% of the face of the assest benefit is extended on the tax books County Court Record "I" at page 461.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 146] Chancery Court Record "F," Page 419 et seq.

No. 1423

Board of Directors of Drainage District Number Seven (7) of Poinsett County, Arkansas

v.

H. W. Rattee, et al. and Lands Delinquent for Drainage Taxes

Decree for 1920 Tax

On this day the cause is presented to the Court upon the complaint, the proof of publication of Notice and Warning

Order, the certified delinquent list returned by the Collector of Revenue of Poinsett County, the answer of Eunice B. James and of the City of Marked Tree, and upon the records and other evidence from all of which the Court finds:

That this is a proceeding to foreclose the land for drainage taxes in Drainage District No. 7, due during the year 1920 and that the notice required by law of the pendency of this proceeding has been duly given and published in the Modern News on the following dates: December 17th, 1920 as shown by proof of publication duly filed and not otherwise and that the said plaintiff is a duly organized Drainage District under the laws of Arkansas and that the lands hereinafter set forth, with other lands of said district, were duly and regularly assessed for the construction of the improvements in said district and said assessment was fixed by the County Court and was confirmed and established by legislative Act and that the assessments due during the tax collecting period of 1920 were duly certified to [fol. 147] the Collector of Revenues of Poinsett County, and spread upon the tax records and as to all lands hereinafter described, the said assessment was not paid and the said Collector duly returned the same as delinquent and the taxes, together with the penalty of 25%, together with interest thereon at 6% per annum from April 10th, 1920, until paid, together with all cost of the proceeding including 10% attorney's fee, is now due and owing upon the lands hereinafter set out in the amount stated below, viz:

Township 12 North, Range 7 East

Name of Owner	Part of Sec	Sec	Acres	Tax
Unknown	Lot 6	12	35.09	63.16
Same	Lot 1		38.91	70.04
Same	Lot 6	13	32.43	40.37
	Lot 7		7.62	13.72
	S ½ N W ¼	12	80.00	144.00

It is therefore considered, ordered, adjudged and decreed, that the lien of said assessments, including penalty, inter-

est and cost as above set forth, be and the same is hereby foreclosed and that upon the sale hereinafter mentioned and the expiration of the time of redemption, all right of redemption of the owners of said land be forever barred and foreclosed and that the Clerk of this Court be and he is hereby appointed commissioner to make sale of said lands upon giving twenty days' notice by publication in some newspaper for at least two insertions, selling the same at public outcry at the front door of the Courthouse upon a day to be fixed by him (said sale not to be prior to November 1st, 1921) for cash and that he report his proceedings hereunder to this Court for approval.

[fol. 148] And be it further ordered that as to the lands of Mrs. Eunice M. James this cause be continued and that as to Lots 4 to 7 in the Original town of Marked Tree upon the complaint of Incorporated Town of Marked Tree, the same be and is hereby stricken from said list and the assessment against the same is canceled.

Pursuant to the orders in the above decree said lands were sold on November 10th, 1922, and at which sale Drainage District Number Seven became the purchaser, by T. T. Mardis, Commissioner. This sale was reported on August 21st, 1923 and said report appears in chancery court Record "G" at page 267. Said deed was duly approved on the same date last above mentioned and approval appears of record in Chancery Court Record "G" at page 270. The deed was duly acknowledged and approved by the Court on same date and is of record in Deed Record "15" at page 479.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 149] "In Chancery Court Record 'F,' page 589, appears decree in favor of said Drainage District Number 7 of Poinsett County, showing that the lands in litigation were duly assessed, taxed, certified as delinquent and foreclosed for non payment of the installment due in 1921 in similar form to the decree for the 1920 installment copied above."

Pursuant to the above decree T. T. Mardis, the Commissioner sold said lands on November 10th, 1922, at which said time Drainage District Number Seven became the

purchaser. This sale was duly reported on December 3rd, 1925 and report appears of record in Chancery Court Record "6" at page 274, and on the same date deed was by T. T. Mardis, Commissioner, acknowledged and approved by the Court; the approval appearing of record in Chancery Court Record "6" at page 282 and the deed and the approval thereof on Deed Record "15" at page 492.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 150] "In Chancery Court Record "6" at page 97 appears decree in favor of said Drainage District No. 7 of Poinsett County, showing that the lands in litigation were duly assessed, certified as delinquent and foreclosed for non-payment of the installment due in 1922, in similar form to the decree for 1920 installment copied above."

Pursuant to the said decree, T. T. Mardis, Commissioner sold said lands on November 10th, 1923, at which said time Drainage District Number Seven became the purchaser. The sale was reported on December 3rd, 1923, and approved by the Court on same date, same appearing of record in Chancery Court Record "6" at page "285." Deed was acknowledged and approved by the Chancellor on the same date and approval of said deed appears of record in Chancery Court Record "6" at page 291 and the deed and the approval thereof appears of record in Deed Record "15" at page "501."

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 151] "In Chancery Court Record "6" at p. 297 et seq. appears decree in favor of said Drainage District No. 7 of Poinsett County, showing that the lands in litigation were duly assessed, taxed and certified as delinquent for non-payment of the installments due in 1923, in similar form to the decree for installment of 1920, copied above."

Pursuant to the said decree, T. T. Mardis, Commissioner sold said lands on April 10th, 1924, at which time Drainage District Number Seven became the purchaser. The sale was reported and approved on May 5th, 1924, and appears of record in Chancery Court Record "6" at page 481. On the same date said deed was duly acknowledged and approved, the approval appears of record in Chancery Court

Record "G" at page "491" and the deed and the approval thereof appearing of record in Deed Record "18" at page "99."

Filed Sept. 18, 1927. Chas. J. Mitchell, Clerk.

[fol. 152] "In Chancery Court Record "H," page 252, et seq. appears decree in favor of the said Drainage District No. 7 of Poinsett County showing that the lands in litigation were duly assessed, taxed, certified as delinquent, and foreclosed for non payment of the installment due in 1924, in similar form to foregoing decrees for other years."

Pursuant to said decree Chas. J. Mitchell, Commissioner sold said lands on August 10th, 1925, at which said time Drainage District Number Seven (7) became the purchaser. This sale was reported and approved on August 14th, 1925, and appears of record in Chancery Court Record "H" at page "353." The Deed and the approval thereof under the same date were approved and the deed acknowledged. Said approval of said deed appears of record in Chancery Court Record "H" at page 360, and the deed and the approval thereof appears of record in Deed Record "20" at page 57.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 153] "In Deed Record 10, page 201, in the office of the Circuit Clerk and Ex Officio Recorder for Poinsett County, at Harrisburg Arkansas appears decree duly made and entered on May 7, 1918, in the United States District Court, for the Jonesboro Division of the Eastern District of Arkansas, in that cause wherein the United States of America was plaintiff and H. Blumenthal, et al., were defendants."

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the plaintiff is the owner of and is entitled to the possession of the following described lands lying and situate in the County of Poinsett and State of Arkansas, to-wit:

"(Here follows description of various tracts of land, including that in litigation.)"

That the defendants, their agents and attorneys and all persons claiming under them be forever enjoined from asserting any right, title or interest in or to said described lands, or any part thereof, or from creating cloud upon the title thereof, or committed any trespass thereon or from interferring directly or indirectly with the peaceable possession and enjoyment of said described lands, or any part thereof, by qualified entrymen, lawfully claiming or asserting rights thereto under the plaintiff, in compliance with the Federal Statutes and rules and regulations of the General Land Office relating to homestead entries; and that the title to said lands be and the same is hereby forever [fol. 154] quieted and confirmed in the plaintiff.

It is further ordered that the defendants E. Ritter, H. Blumenthal and M. Heilbronner pay to the plaintiff the sum of Twenty seven Hundred Dollars ($2,700.00) for timber unlawfully cut and removed and caused to be cut and removed, and caused to be removed from said described public lands belonging to the plaintiff.

It is further ordered that the defendant Chapman & Dewey Lumber Company, a corporation, pay to the plaintiff the sum of One Thousand Five Hundred Dollars ($1,500.00) for timber unlawfully cut and removed and caused to be cut and removed, and caused to be removed from said described public lands belonging to the plaintiff.

It is further ordered that a duly certified copy of this decree be recorded in the office of the Recorder of Deeds in Poinsett County, State of Arkansas.

It is further ordered that the costs in this action be paid by the following defendants and in the following proportions, to wit:

E. Ritter, H. Blumenthal and M. Heilbronner	$960 1920
Chapman & Dewey Lumber Company	920 1920

for which execution may issue as at law.

(Signed) Jacob Trieber, District Judge.

United States of America,
Eastern District of Arkansas,
Jonesboro Division:

I, Sid B. Redding, Clerk of the District Court of the United States for the Eastern District of Arkansas, in the [fol. 155] Eighth Circuit, hereby certify that the following writing annexed to this certificate is a true and correct, and compared copy of the original remaining record in my office at Jonesboro, Arkansas, of the decree in Equity Case No. 28, United States v. H. Bluthenthal, et al.

In witness whereof I have hereunto set my hand and the seal of said Court this 10th day of June, in the year of our Lord, One Thousand Nine Hundred and Eighteen and of the Independence of the United States, the One Hundred and Forty Second.

Sid B. Redding, Clerk, by E. P. Mathes, D. C.
(Seal.)

Filed for record June 18, 1918, and recorded June 20, 1918.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 156] Stipulation of Lands Involved

It is stipulated between counsel herein that in addition to the so-called government lands involved in this suit in Township 12 North, Range 7 East and 6 East, there was a large acreage of land that had long been patented, added to the District at the same time and by the same proceeding.

[fol. 157] St. Francis Levee District of Arkansas

H. N. Pharr, Chief Engineer, Bridge Junction, Arkansas, February 6th, 1926

Outline of Condition and Progress of Levee Construction by the St. Francis Levee District of Arkansas

The original act of the General Assembly of Arkansas creating the St. Francis Levee District provides that the Board of Directors shall construct a levee and protect

and maintain same in an effective condition by building, rebuilding, repairing or raising levees on the right bank of the Mississippi River or such other places as the said Board may select and do all acts which in their opinion are necessary to secure the Levee District from overflow by the waters of the Mississippi River.

This language clearly contemplates that this work is a continuing work of building, rebuilding and maintenance and in its very nature could not be planned and constructed in such a way as to make a completed project at any definite time.

[fol. 158] Synopsis

The Levee District was organized in 1893 and includes an area of 1,680,000 acres. The original plans were adopted in 1896 for the construction of the levee to contain 8,000,377 cubic yards at a cost of $1,200,697. At first the assessed benefit was $2.00 per acre and the rate levied for levee purposes was 2% of the betterment which produced an annual revenue of 4 cents per acre per year.

The financial resources, population and development of the Levee District were controlling in the adoption of the original plans and as these factors have increased from year to year their importance has demanded an increase in the plans for levee construction to provide an increased degree of security against damages by the floods of the Mississippi River.

The original levee was designed only to restrain medium floods which occur often, while additional and new plans adopted from year to year have been designed to restrain floods of increased magnitude. At the same time the betterment, rate of taxation and revenue for levee purposes have been correspondingly increased.

At the present time the estimated final contents of the levee are 51,100,800 cubic yards of which 91.1% has been constructed. The annual revenue has been increased to 25 cents per acre. This amounts to six times the original contents as well as six times the original revenue for levee purposes.

In addition to the above new look levees have been required during the past 14 years at an average annual cost [fol. 159] of $110,871. Also an average annual cost for maintenance of levee of $39,629.

The average life of a levee is about 25 years. The term "completed" as applied to levee construction and flood control is relative and not absolute.

Condition and Progress

In the year 1893 when the St. Francis Levee District of Ark. was organized, the Levee Board adopted a plan for the location, height or grade, freeboard, dimensions, character and construction for the levee together with method of payment for same.

At that time the area of the Levee District comprising approximately 1,000,000 acres was practically a swamp and largely undeveloped. Much of this land belonged to the State and was considered worthless.

The conditions and situation of the Levee District at that time, including the economical aspect, were controlling in the plans for levee construction and flood protection which were adopted by the Levee Board.

These plans included a continuous levee along the right bank of the Mississippi River throughout the extent of the Levee District designed to be built to height or grade, which while it might not be sufficient to protect the lands and the people of the Levee District from overflow by maximum floods, yet would be sufficient to restrain floods of average or medium magnitude which occurred on an average of two out [fol. 160] of every three years which was much more frequent than the occurrence of floods of maximum magnitude which was on an average of once to every eight or ten years. The undeveloped condition, scant population and poor financial resources of the Levee District justified this plan of protection, at moderate cost, against the high frequency of damage from medium floods, while the large cost of any plans of protection against remote frequency of damage from floods of maximum magnitude was not at that time justified.

The original plans adopted by the Levee Board for the construction of the levee as shown by the records of the Board (Annual Report of 1896) contained an estimated final content of only 8,660,377 cubic yards at an estimated cost of only $1,299,056.12. It will subsequently be seen that the plans adopted by the Board from time to time since

have gradually increased the quantities and cost to approximately six times the original amount.

In works of improvement designed to prevent or lessen the damage caused by the destructive elements of nature as accumulated in great floods during storms the term "completion" as used with reference to construction of the levee is relative only and not absolute. The construction of the levee on a certain location may be "completed" at a certain time to a certain plan, specifying a certain height and dimensions. Yet this plan, location, height and dimensions when "completed" may prove insufficient both physically and economically for the purpose for which it was designed or for changed conditions. Even before it is "completed" this lack of sufficiency may be demonstrated or be [fol. 161] come apparent and require additional and new plans at increased cost. This change in requirements may be occasioned by the increase in development, population, values or by the desire for increased convenience, security or efficiency.

Such changes in local conditions often require additional and new plans but general or foreign developments, over which a certain locality may have no control, may also require additional and new plans as has been forcibly illustrated by the following conditions which have confronted the St. Francis Levee District of Arkansas.

When the Levee District was organized and the original plans adopted in the year 1893 there were practically no other levees existing along the Mississippi River above or opposite this Levee District except along the lower part of the District. Soon after that date however and up to the present time numerous levee districts have been organized along said river, both above and on the opposite side of the river and many miles of levee have been constructed in said district with the result that the flood waters of the Mississippi River have thereby been confined and restricted to such an extent that the flood surface has been greatly increased in elevation. This has necessitated the adoption by this Levee Board from time to time of successive additional and new plans for the construction of the levee at increased cost.

The adoption by the Levee Board from time to time of additional and new plans at increased cost has been re-

quired further by the development of drainage facilities in the Northern, Middle Western and Western States which contribute their rainfall run-off and drainage to the Mis- [fol. 162] sissippi River and its tributaries. Since this levee District was organized 33 years ago much of the area in the above States has been gradually drained in a progressive way so that the rainfall and drainage therefrom has more and more quickly been precipitated by the increasing drainage facilities, first into the tributaries and then into the channel of the Mississippi River, much in the manner of flushing a sewer, with the result that such increase in the rate of the run-off of the rainfall and drainage and the consequent concentration of flood water in the channel of the Mississippi River was greatly contributed to the increase in flood heights along the entire length of the levee in this district and necessitated the adoption of additional and new plans providing for increased height or grade, freeboard, base and dimensions for the levee at increased cost.

The extent to which the two foregoing factors have contributed to increased flood heights may be comprehended by reference to the greatest flood height attained in the Mississippi River at Cairo previous to 1893 which was 52.17 feet in the year 1885, while a flood height of 54.69 feet was attained at Cairo in 1913. This is an increase in flood height at Cairo of 2.52 feet. Similarly the previous maximum flood height at Memphis was 35.6 feet in 1890 compared with 46.55 feet in 1913, an increase of 10.95 feet. A considerable part of this latter increase is attributed to the effect of the construction of the levee in this district.

Other important considerations entering into an improvement of this character are the changes in numerous localities that are constantly taking place in the Mississippi River, which include location of the channel and bank, di- [fol. 163] rections and velocity of the current, fill, scour, etc., together with the rate of change which is very variable. These changes of nature make it practically impossible to construct a work of improvement designed to restrain and control these forces of nature that will not itself from time to time have to be changed, renewed, maintained and repaired.

Summarizing the outline of the principal factors entering into consideration in the design and adoption of plans

for flood protection by the construction of levees in the St. Francis Levee District of Arkansas, the following may be enumerated:

1. Financial resources.
2. Population.
3. Development, agricultural, commercial.
4. Values, land, property.
5. Confinement or restriction of floods.
6. Drainage Mississippi River watershed, run-off.
7. Changes of the Mississippi River, vagaries.
8. Destruction of levee by caving banks and floodwaters.
9. Renewal of levee by loop levees on new location.
10. Protective works, dikes, revetments, pavements.
11. Increased security, height, freeboard, base, slopes, banquette.
12. Maintenance of levee, highwater protection, guarding, clearing, repairs.

Accordingly the method and the plan adopted by the Levee Board for the protection of the levee district from floods has been controlled by the progress of development of the lands in the Levee District, the increase in population and the financial resources of the Levee District which (fol. 164) in a manner have progressed with and resulted from the construction of the levee and from its anticipated benefits. As these controlling factors have increased, the Levee Board has from time to time adopted additional and new plans designed to increase the security of the Levee District against damage from floods and has made financial arrangements for the payment of constructing the levee according to same.

The foregoing method and plan of development may be more plainly illustrated by considering the condition and situation of a young man when he marries and undertakes to establish a home. He has limited financial resources and his needs are few. He plans a very moderate house of three rooms and arranges financially to pay for same, but on account of his financial condition he carries no fire or tornado insurance for security against loss. However, he completes the house according to his adopted plans. In a few years he has children and begins to prosper in business and accumulates wealth and becomes financially able to pay for his increased necessities and he accordingly adopts an ad-

ditional plan for his house which provides for three additional rooms with increased conveniences, and he arranges financially for the cost of constructing the home according to his new plan and he also takes out fire insurance on the building. Then again in a few years when his sons and daughters are almost grown and he has continued to prosper in business and accumulates wealth and desires to afford his family entertainment and luxury, he adopts additional and new plans for his still larger, more nicely furnished and decorated home of ten rooms, with all conveniences and makes financial arrangements for the cost of constructing same and he then takes out a policy for insurance as security [fol. 165] against loss by fire, tornado and other destructive elements, which affords a margin of safety or freeboard against damages.

Now from the above it will be seen that three different plans at three different costs have been adopted at three different times for the construction of a house which has been built or "completed" according to adopted plans and the size and sufficiency of each house has been controlled by the existing conditions which were the financial resources of the owner of the home and his necessities, yet each has been a house and a home. It is not material whether he completed his house in every particular according to each adopted plan immediately or even before the time that he adopted the additional or new plan and proceeded with the construction of same. Each additional plan and improvement and financial arrangement to pay for same was a new project and an additional improvement and benefit. The words additional and new in effect have the same meaning with reference to improvements of this character constructed according to this method.

A further illustration of the necessity, in improvements of this character, of discrimination between the plans for the original project and additional or new plans for improvement identical in kind and character but affording increased betterment at an increased cost, is illustrated where a road improvement district adopts plans and makes financial arrangements for the construction of a hard surface road in a certain location of a hard surface width of—say, nine feet with earth shoulders. The construction of same is proceeded with and while under construction, plans are

[fol. 166] proposed for the construction of a similar road parallel with the original road but on a location one mile in distance from the original road. The construction of the proposed second road would consitute an improvement and create an additional or new betterment. However, before the second road is constructed, it is proposed instead, to adopt an additional or new plan for the construction of the original road to an increased width of eighteen feet for the hard surface to prove increased conveniences and safety for the passage of vehicles, and the plans for same are adopted and arrangements made to pay for the construction of this increased width of the hard surface roadway. Now it is not material as to what progress toward completion has been made in the original hard surface road or whether it has been completed or not. The fact remains, that the adopted additional or new plans constitute a further improvement and affords an increased benefit requiring an increased cost and an increased assessment for the purpose of taxation. Whether this procedure of adoption of plans and construction is carried out by the same agency or commissioners or by others, is immaterial, as the principles involved are the same. Two hard surface roads constituting one wide hard surface road have been built under plans which were adopted at different periods and for which financial arrangements have been made upon different occasions instead of constructing two narrow hard surface roads parallel it is true, but at a distance of one mile apart.

Again, for example, a single track railroad bridge "completed" several years ago now needs to be both widened and strengthened and practically built anew to provide a [fol. 167] double track required for increased traffic and loads and much heavier and powerful locomotives; or a city street "completed" a few years ago now needs to be widened and improved to provide for increased efficiency and increased use necessitated by increased traffic occasioned by the invention of the automobile.

These illustrations are entirely applicable to the additional and new plans for the construction of the levee which by reason of its increased degree of security and efficiency constitutes an additional improvement and affords an increased betterment at an increased cost. While the road and street mentioned above have been widened, the levee

has been increased in height, base and dimensions as well as by the construction of banquettes, dikes, sub-levees and other features tending to add strength and security, which has constituted new work not provided for nor contemplated probably in the original plans of the improvement, or, if contemplated, not included in the plans because of economical and other factors which were controlling.

So the progress of the construction of the levee has been by the adoption from time to time of additional and new plans designed to afford increased security against damage by floods and increased benefits to the lands of the Levee District and such has constituted a new and additional improvement which has required an increase in the assessment of betterments and in taxation for levee purposes.

This is shown by the fact that in the beginning in 1893, the betterment to each acre of land in the Levee District was assessed at $2.00 and rate of taxation for levee purposes of 2% per annum was levied providing a revenue of 4 cents [fol. 168] per acre per year. Gradually and as additional or new plans were adopted for the construction of the levee which afforded increased security and benefits, the assessed betterment as well as the rate of taxation was increased until now the assessed betterment is $5.00 per acre and the rate of taxation is 5% thus affording an annual revenue of 25 cents per acre which is more than six times the amount originally provided.

The extent, amount of quantities and cost involved in the adoption of additional and new plans for the construction of the levee from time to time is very material and considerable as shown by the fact that the plans under which the levee was being constructed in the years 1912 and 1913 had been increased to contain and estimated number of cubic yards in its final contents of 31,535,996 cubic yards, while in the year 1914, immediately after those floods which broke the levee in several places and demonstrated the insufficiency of those plans for the control of floods of such magnitude, additional and new plans were adopted by the Levee Board which required for completion an estimated final content of 51,174,000 cubic yards of earth in the levee embankment. Work of levee construction proceeded accord-

ing to these new plans until the year 1916 when additional and new plans were adopted requiring an estimated final yardage of 52,009,000 cubic yards. Work proceeded under these plans until 1920 when additional and new plans were adopted requiring 52,940,000 cubic yards in the final content. In the next year, 1921 additional and new plans were adopted requiring 63,876,000 cubic yards as estimated final contents of the levee. These plans have been proceeded with and there yet remains 5,668,832 cubic yards of earth to be [fol. 169] placed in the embankment in order to complete the main front line levee to the last named quantity of final contents. In other words, 91.1 per cent of this last estimated final contents of main line levee has been constructed. It is true that additional or new plans for the construction of the levee are adopted practically every year.

The foregoing review of the increase or addition or new work added to the adopted plans for the levee extends over a period of only fourteen years from 1912 to 1925, inclusive, and shows that during this period the additions and new plans adopted for the construction of the levee increased the estimated final contents from 31,535,996 cubic yards to 63,876,000 cubic yards which is an increase of more than 100 per cent. This fourteen year period is selected for examination and consideration only because the records are conveniently available and complete. Examination of plans adopted by the Levee Board during previous periods will show similar increases in quantities and costs.

This increase in the number of cubic yards in the final contents of the levee brought about by the adoption of additional and new plans for the construction of the levee provides for a very greatly increased degree of security to the levee district against damages by floods by increasing the height, freeboard or factor of safety, dimensions and strength of the levee and by protecting the levee against destruction by swift currents, storms during flood, caving banks of the river and other elements. However, the foregoing considerable as it is in additional quantity and cost, [fol. 170] does not include a very large yardage which has been placed in the levee and which during this fourteen year period has been lost by destruction by the caving banks of the Mississippi River and by crevasses from

brakes in the levee during great floods of 1912 and 1913 amounting to a total for this fourteen year period alone of 3,839,659 cubic yards which had to be replaced entirely with some additional increase on account of increase in length necessitated by look levees.

The foregoing has been summarized from the reports of the Mississippi River Commission and the U. S. Army engineers relative to levee construction in this district. The Government operates in conjunction with the Levee Board in levee construction work and under the same adopted plans except slight modifications relative to certain work which is required to be done wholly at the expense of the Levee Board. The foregoing yardage recorded by the Government includes some levee construction work in Missouri embracing the levee to which the levee of this district joins and amounting to approximately 20 per cent of the quantities mentioned.

The records of the Levee Board, however, includes only the levee in the St. Francis Levee District of Arkansas and shows that for the fourteen year period from 1912 to 1925 inclusive, that the actual yardage that was required during the period to replace the levee that was destroyed by caving banks of the Mississippi River or by crevasses was 3,798,903 cubic yards and cost $1,176,870.11.

In the same period of fourteen years, the number of [fol. 171] cubic yards contained in dikes or spur levees which were required to be constructed for the purpose of protecting the levee from the swift current of the Mississippi River during floods were 412,624 cubic yards and cost $148,268.01.

In the same period the number of cubic yards contained in the sub-levees, which was required to be constructed as a reinforcement or security to the foundation of the main levee and adjacent land side race amounted to 142,927 cubic yards and cost $30,909.06 to which the cost of $5,526.63 should be added for the cost of culverts and outlets to drain the sub levee area.

The foregoing item of yardage required in new loop levees to replace the original levee destroyed by caving banks of the Mississippi River and crevasses and the yardage recount d in dikes or spur levees and the yardage re-

quired in sub-levees together with the cost of same constitute absolutely new work which was not included in any *previously adopted plans, but the construction of which* was immediately required by developments which were unforeseen and which therefore could not be definitely provided for in any previously adopted plans. This work could not therefore be reasonably included in the original plan of construction of the levee, but nevertheless the quantity and cost of same is very material and considerable as shown above, amounting to a total for this period for these three items of 4,354,454 cubic yards at a total cost of $1,361,573.21. This does not include emergency bank revestment work which was undertaken by the Levee Board to prevent destruction and loss of the levee at a cost of $60,[fol. 172] 000.00, neither does it include the cost of right-of-way, crop damages, moving buildings and houses from the right-of-way required for this new work alone amounting to $130,653.62, neither does it include the cost of maintaining the levee, including the cost of guarding and protecting the levee during floods amounting to $546,417.65 The foregoing makes a total cost of absolutely additional or new work that was required to be done during only the above fourteen year period of $1,552,206.81, and the total cost of maintenance for the same period was $546,417.55. The average cost for the new work over this period has amounted to $110,871.91 per year. The average cost for maintenance of the levee, the cost of which was not included in the original cost of construction of the levee has amounted to $39,029.82 per year or a total annual cost of absolutely new levee construction and maintenance of levee of $149,901.73 which is very material and considerable and constitutes an annual improvement and affords an annual benefit and betterment for which, from its very nature, arrangements to pay for same can be assessed and levied only annually and from year to year as the extent and cost of same can be ascertained.

The location of the above loop levees, dikes and sub levees are all along the levee throughout the extent of the Levee District and may be considered to the extent generally over the entire levee line of about 165 miles. During the past year the construction of new loop levees have

been required at Barfield, Mile 58 on the levee, between Luxora and Osceola Mile 77 on the levee and at Turnages, Mile 101 on the levee, while from year to year in the past other loop levees have been required in numerous other [fol. 173] localities, as they will be in the future where the caving bank of the river and breaks in the levee during floods, require the construction of new loop levees. So that it may be considered that this cost for new work extends throughout the entire district. It is a common expression in connection with levee construction work along the Mississippi River that "the life of a levee is about 25 years"; meaning that within that period of time a levee system has to be practically renewed in its entirety because of destruction from caving banks of the Mississippi River and breaks in the levee during floods. While within recent years the life of a levee has been somewhat extended by improved construction and revetment of saving banks, yet this experience is mention to show that the word "complete" as applied to levee construction is relative only and not absolute.

The foregoing annual cost for new levee and maintenance is not included of course in the previously mentioned additional and new work required to construct a levee to the plans adopted from time to time and which as previously shown had alone increased the yardage, exclusive of that part constructed by the Government in Missouri, approximately 25,872,000 cubic yards which at 30 cents per cubic yard would amount to an increased cost over the adopted plans which were in force in the year 1912, of $7,761,600, which on the 1,600,000 acres of land in the levee district would amount to an additional cost of approximately $5.00 per acre and of which, if the Government pays for approximately one half of the cost for same as provided in the Flood Control Act, would require an [fol. 174] additional betterment assessment of $2.50 per acre on all the lands of the Levee District.

The foregoing is an outline of the method and procedure of the Levee District in constructing the levee and maintaining same along the right bank of the Mississippi River throughout the extent of the Levee District and an effort has been made to show that the conditions and situation

has been such that the economical progress of the work has been controlled by the benefits derived and the development of the Levee District and its financial resources and that the adoption of new plans of improvement have been necessary from year to year and that such have created increased benefits and have necessitated corresponding increased assessments and rates of taxation to provide payment for constructing the levees to the new plans adopted and renewing, protecting and maintaining the levee. If it could be realized that the levee will some day be completed, it will still be necessary to replace any part of the levee that may be destroyed by the caving banks of the river or by crevasses caused from breaks in the levee and it will also be necessary to guard, protect and maintain the levee during floods which will always be a considerable cost and all of the lands protected by the levee will always in the future receive the annual benefit of protection from damage by floods and should be required equitably to sustain their fair proportion of the expense of building, replacing and maintaining the levee.

(Signed) H. N. Pharr, Chief Engineer.

Mc.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 175] Bonds Issued and Outstanding, St. Francis Levee District of Arkansas

Date of issue	Series	Amt. of issue	Amt. outstanding
July 1, 1907	A	$ [illegible]	None
November 1, 1908	B	[illegible]	$ [illegible]
April 1, 1909	C	[illegible]	[illegible]
July 1, 1907	D	[illegible]	[illegible]
July 1, 1909	E	[illegible]	[illegible]
July 1, 1909	F	[illegible]	[illegible]
Jany. 1, 1914	G	[illegible]	[illegible]
April 1, 1915	H	[illegible]	[illegible]
July 1, 1917	I	[illegible]	[illegible]
July 1, 1918	J	[illegible]	[illegible]
July 1, 1919	K	[illegible]	[illegible]
July 1, 1919	L	[illegible]	[illegible]
Jany. 1, 1921	M	[illegible]	[illegible]
July 1, 1922	N	[illegible]	[illegible]
July 1, 1922	O	[illegible]	[illegible]
Jany. 1, 1924	P	[illegible]	[illegible]
		$ [illegible]	$ [illegible]

I, W. O. Byler, Secretary-Treasurer of the St. Francis Levee District of Arkansas, hereby certify that the above is a true and correct statement of the bond issues and the outstanding bonds of the said District, as shown by the books and records of the same, this the 13th day of August, 1926.

W. O. Byler, Secretary-Treasurer.

Filed Sept. 18, 1926. Chas. J. Mitchell, Clerk.

[fol. 176] Record of Decrees

The lands in litigation were duly assessed, taxed, became delinquent and were foreclosed by the chancery court of Poinsett county, Arkansas, in decrees rendered in favor of said St. Francis Levee District, each and every year beginning 1921, to and including 1925, said decrees being of record as follows:

1. For the year 1921 entered February 16, 1923, in Chancery Record "G" page 383.

2. For the year 1922, decree entered December 3, 1923, in Chancery Record, "G" page 389.

3. For the year 1923, decree entered May 5, 1924, and being of record in Chancery Record "H", page 33.

4. For the year 1924, decree entered July 27, 1926, and being of record in Chancery Record "I", page 38.

5. For the year 1925, decree entered July 27, 1926, and being of record in Chancery Record "I" page 50.

[fol. 177] "Roy Rice, the original plaintiff in the principal case having died, while same was pending, proceedings for revivor in the name of his executor were duly had and order reviving said cause was made as follows:"

IN CHANCERY COURT OF POINSETT COUNTY

REVIVOR

On this day, February 18th, 1927, a regular adjourned day of this Court, it appearing to the Court that the plaintiff, Roy Rice, departed this life on the 18th day of November, 1926, and that Exchange Trust Company has been duly appointed and qualified as executor of his estate.

Therefore it is considered, ordered, adjudged and decreed that this cause be, and the same is hereby revived in the name of said Exchange Trust Company as such executor as plaintiff herein.

J. M. Futrell, Chancellor.

(fol. 178) "The trial Court at a regular adjourned day in February, 1927, pursuant to petition of plaintiff, entered order as follows:"

IN CHANCERY COURT OF POINSETT COUNTY

ORDER MAKING CHASE NATL. BANK ET AL. PARTIES DEFENDANT

On this day, February 18th, 1927, being a regular adjourned day of this Court, it appearing to the Court that the holders of bonds outstanding in defendant Drainage District Number Seven, Poinsett County, Arkansas, have not been served in this cause or joined herein as parties defendant and it appearing further that Chase National Bank, A. J. Twerell, and Guardian Savings and Trust Company are respectively trustees for the bondholders of said District for the several issues of bonds outstanding.

Therefore it is by the Court considered, ordered, adjudged and decreed that the said Chase National Bank, A. J. Twerell and Guardian Savings and Trust Company, as trustees for the said bondholders of Drainage District Number Seven, of Poinsett County, Arkansas, be and they are hereby made parties defendant in this cause and it is ordered that they be served by publication of warning order as provided by law.

(Signed) J. M. Futrell, Chancellor.

[fol. 179] Warning order was published and proof thereof filed as to Guardian Trust Company, of Cleveland, Ohio, Chase National Bank of New York City, and A. J. Twerell, of Cleveland, Ohio, Trustees in the various bond issues of Drainage District No. 7.

[fol. 180] In Chancery Court of Poinsett County

Report of Attorney ad Litem—Filed May 3, 1927

Chas. D. Frierson, heretofore appointed attorney ad litem for Guardian Trust Company, of Cleveland, Ohio, Chase National Bank, of New York City, and A. J. Twerell, of Cleveland, Ohio, respectfully states that immediately after his appointment he wrote all of said defendants of the pendency of this suit; that the letters were in the envelopes of the undersigned with his return address thereon. They were duly stamped and deposited in the United States Post Office, at Jonesboro properly addressed.

He further states that he has received no reply from any of the said persons or companies and has no authority from them to take any steps in said cause.

Wherefore he prays to be discharged.

Respectfully, Chas. D. Frierson, Attorney ad Litem.

[File endorsement omitted.]

[fol. 181] In Chancery Court of Poinsett County

#2592

Exchange Trust Company, as Executor of the Estate of Roy Rice, Deceased, Plaintiff,

vs.

Drainage District No. 7 of Poinsett County and Its Commissioners and St. Francis Levee Board, Defendants

Decree

On this day, May 3rd, 1927, being a day of this regular term, this cause coming on to be heard and all parties being

present by attorneys, it appears that said cause was originally filed by Roy Rice, now deceased, and has been revived in the name of Exchange Trust Company as Executor of the estate of the said Roy Rice, deceased, as plaintiff in said cause.

And it further appears that by order of this court duly made and entered at its regular adjourned day, February 18th, 1927, Guardian Trust Company of Cleveland, Ohio, Chase National Bank of New York and A. J. Twerell of Cleveland, Ohio, as trustee for bonds of defendant, Drainage District No. 7, issued and outstanding were made parties defendant herein and publication of warning order directed and Chas. D. Frierson duly appointed and qualified as Attorney Ad Litem for said non resident defendants; and there is filed at this time proof of publication of said warning order and the report of said Chas. D. Frierson as such Attorney Ad Litem, all being in due and proper form

[fol. 182] Whereupon it being so agreed by counsel, it appears that the determination of this cause shall likewise determine the rights in the several cases pending in this Court against these defendants, wherein John W. Covey, Parker Johnson, J. M. Brackett, and Luther Weems, J. E. Son, W. R. Adams, Mark Schurtz, D. F. Portis and E. F. Abbott, respectively, are plaintiffs

And thereupon the cause is presented on the pleadings in the case with exhibits attached, and upon the record in the case as follows:

1. Stipulation of attorneys under date of May 6, 1926, with exhibits thereto attached and records therein referred to.

2. Stipulation of attorneys under date of May 10, 1926, with exhibits thereto attached and records therein referred to.

3. Stipulation of attorneys under date of May 15, 1926, with exhibits thereto attached and records therein referred to.

4. Order of the County Court of Poinsett County under date of July 12, 1918, appearing in County Court Record "H" pages 407 409.

5. Order of the County Court of Poinsett County under date of September 1, 1919, appearing of record in County Court Record "H" pages 538 9.

6. Summary of bond issues of Drainage District No. 7 as prepared by Judge S. T. Mayo.

7. Resume of foreclosure decree for installment of tax due in 1920 in D. D. #7.

8. Resume of foreclosure decree for installment of tax due in 1921 in D. D. #7.

9. Resume of foreclosure decree for installments of tax due in 1922, in D. D. #7.

10. Resume of foreclosure decree for installment of tax due in 1923, in D. D. #7.

$10\frac{1}{2}$. Stipulation of attorneys under date of October 11, 1926, with letter from Pride & Fairley of October 5, 1926, attached.

[fol. 183] 11. Resume of foreclosure decree for installment of tax due in 1924, in D. D. #7.

12. Decree of the United States District Court for the Jonesboro Division of the Eastern District of Arkansas under date of May 7, 1918, wherein the United States of America was plaintiff and E. Bluthenthal et al. were defendants, same being recorded at Harrisburg in the office of the Circuit Clerk and Recorder in Deed Record 10, p. 201.

13. Depositions of D. F. Portis, W. R. Adams, A. A. Jernigan and E. F. Abbott.

14. Synopsis of the organization and history of the St. Francis Levee District and the construction of and additions to the levee, as prepared by R. N. Pharr, its engineer, under date of February 6, 1926.

15. Resume of the bond issue of St. Francis Levee District under date of August 13, 1926.

16. Resume of foreclosure decrees in favor of the Board of Directors of St. Francis Levee District.

From all of the above the Court finds the issues of law and fact in favor of plaintiff and against the defendants and that any action by either of said defendants undertaking to levy upon the lands of plaintiffs herein an assessment or collect any tax on the basis of any such attempted levy is unlawful and void because an attempt to exercise power over lands of the United States.

And the Court finds that the attempted levy of assessment and decrees of foreclosure on failure to pay such assessments to either or both of the defendants herein, upon the lands of plaintiff herein in Poinsett County, Arkansas, described as Lots 2 and 3 and the south half ($S\frac{1}{2}$) of the northwest quarter ($NW\frac{1}{4}$) in Section twelve (12), Township Twelve (12) North, Range Seven (7) East, containing 158.9 acres are void and of no effect and that the said attempted forfeitures, foreclosures and deeds pur-
[fol. 184] suant thereto as hereinafter described should be canceled and held for naught as a cloud upon the title of the above described lands, to-wit:

1. Decree of defendant Drainage District No. 7 vs. C. A. Wilburn et al. for installments to be due on the above described land in 1922. Said decree being of record in Chancery Court Record "G" page 97, in the office of the Chancery Clerk and Recorder of Deeds for Poinsett County for Harrisburg, Arkansas.

2. Report of sale and approval thereof pursuant to above decree appearing in Chancery Court Record "G" at page 285, in Chancery Court Record "G" at page 291 in said office, and commissioner's deed pursuant to said decree and report appearing in Record 15, at page 501 in the office of said Clerk and Recorder of Deeds.

3. Decree of defendant Drainage District No. 7, vs. Ed Landers, et al., Docket #1908 for installment of tax alleged to be due in 1923, same appearing of record in Chancery Court Record "G," p. 297, et seq. in the office of the Chancery Clerk and Recorder of Deeds for Poinsett County, at Harrisburg, Arkansas.

4. Report of sale and approval thereof appearing in Chancery Court Record "G" at page 481 and Chancery Court Record "G" at page 491 in said office and Commis-

sioner's deed pursuant to said decree and report, appearing in deed record 18, at page 99 in said office.

5. Decree of defendant Drainage District No. 7, vs. Ed Landers et al. Docket No. 2338 for installment of tax due in 1924, said decree being in Chancery Court Record "H" page 252, et seq. in the office of the Chancery Clerk and Recorder of Deeds for Poinsett County at Harrisburg, Arkansas.

6. Report of sale and approval of deed, pursuant to above decree appearing of record in Chancery Court Record "H" at page 353 and Chancery Court Record "H" at page 360 respectively in the office of said Clerk and Recorder, and record of Commissioner's deed, executed pursuant thereto appearing in Deed Record 20, at page 57 in the office of said Clerk and Recorder.

7. Decree of defendant St. Francis Levee District vs. J. B. Heagler et al., Docket No. 1682 for 1921 tax, appearing in Chancery Record "G" at page 383, in the office of the Chancery Clerk and Recorder of Deeds for Poinsett County at Harrisburg, Arkansas.

[fol. 185] 8. Decree in favor of defendant St. Francis Levee District against J. B. Heagler, Docket # 1901 for 1922 taxes appearing in Chancery Court Record "G" at page 399, in the office of the Chancery Clerk and Recorder of Deeds for Poinsett County at Harrisburg, Arkansas.

9. Decree in favor of defendant St. Francis Levee District v. J. B. Heagler, et al., #2156, for 1923 taxes, same being of record in Chancery Record "H" at page 33, in the office of the Chancery Clerk and Recorder of Deeds for Poinsett County at Harrisburg, Arkansas.

10. Decree in favor of defendant St. Francis Levee District v. A. H. Landers, et al., Docket No. 2382, for 1924 taxes, appearing in Chancery Record "I," page 38, in the office of said Chancery Clerk and Recorder of Deeds for Poinsett County, at Harrisburg, Arkansas.

11. Decree in favor of defendant St. Francis Levee District v. B. F. Cole, et al., Docket #2612, for 1925 taxes, same

appearing in Chancery Record "I," page 50, in the office of said Chancery Clerk and Recorder of Deeds for Poinsett County at Harrisburg, Arkansas.

That every and all of the above forfeitures, decrees, sales and any and all deeds or attempted deeds of conveyances pursuant thereto are unauthorized, unlawful and void and of no effect.

The Court further finds that plaintiff is not entitled to recover any taxes heretofore paid on account of either defendant district.

Therefore it is by the Court considered, ordered, adjudged, and decreed that any and all attempt on the part of defendant Drainage District No. 7, Poinsett County, Arkansas, and St. Francis Levee District and either or both of them to subject the above described land to assessment for taxes or to collect any such attempted assessment or levy of tax is unauthorized, unlawful, void and of no effect, and that each and all of the above attempted assessments, levies of such tax, pursuant to such assessment, decrees attempt- [fols. 186 & 187] ing to foreclose the alleged lien of such assessments, attempted sales under and by virtue of any such decrees and commissioners deeds executed or attempted to be executed, pursuant thereto and any and all other proceedings with reference to the said described land, on the part of either or both of said defendants be and the same are hereby canceled, set aside as a cloud upon the title of said described lands and held for naught, and said defendants and each and both of same are hereby perpetually enjoined and restrained from hereafter attempting to make any such assessments, levies of tax or special assessment as against the said described land and from taking any action by process of law or otherwise for the enforcement of any such pretended assessment or levy of tax.

It is further ordered and decreed that plaintiff is not entitled to recover any tax or installment thereof heretofore paid to either defendant district.

It is further ordered that plaintiff have and recover all costs of this action.

And each and both of said defendants duly excepting to the findings and decree of the court as above set out pray an appeal to the Supreme Court, which is granted.

J. M. Futrell, Chancellor.

[fol. 188] IN SUPREME COURT OF ARKANSAS

DRAINAGE DISTRICT NO. 7 OF POINSETT COUNTY et al., Appellants,

vs.

EXCHANGE TRUST COMPANY, as Executor, Appellee

Appeal from Poinsett County Court

MINUTE ENTRIES

Sept. 19, 1927.

Come the parties by their solicitors, and by leave of Court file a stipulation amending the record herein so as to speak the truth.

October 17, 1927.

On motion of J. A. Tellier, an attorney of this Court, leave is granted to him to file a brief herein as an amicus curiae.

[fol. 189]

Oct. 31, 1927

On motion, leave is granted by the Court to D. F. Taylor, a member of the bar of this Court, to join J. A. Tellier, to whom leave was heretofore granted, in the preparation of a brief in this cause as amicus curiae.

November 28, 1927.

Come the appellants by their solicitors and pray that this cause be advanced as of public interest; and the Court having heard the said motion, and being fully advised, it is ordered that the cause be advanced on the docket, and that it be set down for submission on December 19th proximo.

December, 19, 1927.

This cause being regularly called, come the parties thereto by their solicitors, and said cause is submitted upon the transcript of the record and the briefs filed, and is by the Court taken under advisement.

[fol. 190] IN SUPREME COURT OF ARKANSAS

JUDGMENT—January 9, 1928

This cause came on to be heard upon the transcript of the record of the chancery court of Poinsett county, and was argued by solicitors. On consideration whereof it is the opinion of the Court that there is error in the proceedings and decree of said chancery court in this cause, in this: The court erred in granting the relief prayed for, whereas the complaint should have been dismissed for want of equity.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, for the error aforesaid, reversed, annulled and set aside with costs; and that this cause be remanded to said chancery court with directions to dismiss the complaint for want of equity.

It is further ordered and decreed that said appellants recover of said appellee all their costs in this Court in this cause expended, and have execution thereof.

[fol. 191] IN SUPREME COURT OF ARKANSAS

DRAINAGE DISTRICT NO. 7, POINSETT COUNTY,

v.

EXCHANGE TRUST CO., EXECUTOR

OPINION—Jan. 9, 1928

Statement of Facts

Appellee brought this suit in equity against appellants to enjoin them from levying and collecting drainage taxes and levee taxes upon this land.

Drainage District No. 7 of Poinsett County, Arkansas, was organized under a special act passed by the Legislature of 1917. The act organized a drainage and levee district in Poinsett county, Arkansas, consisting of certain lands which are described in the act. The district was organized for the purpose of draining the lands described in its boundaries by a system of drainage ditches and levees and to enable said district to borrow money for the con-

struction of said drainage ditches and levees. Acts of 1917, p. 1053. The district as originally formed consisted of lands west of the St. Francis River in Poinsett county.

Roy Rice and others owned lands in Poinsett county east of the St. Francis River comprising, in the aggregate, 3,290 acres. Their lands were flooded by the waters of a drainage district organized in Mississippi county, and, in order to secure protection against the flood waters from the Mississippi county District and also to secure better drainage to their own lands, the land owners above mentioned in Poinsett county east of St. Francis River petitioned the [fol. 192] county court to allow them to be added to Drainage District No. 7 of Poinsett County. On March 15, 1918, the petition for the annexation of the territory east of St. Francis River in Poinsett county was acted upon by the county court and the order of annexation was made. The order provides that there be levied against the lands annexed taxes in accordance with the benefits which said lands shall receive for the cost of draining, reclaiming and protecting the same. The board of directors of the drainage district consented in open court to the annexation of the territory to the district. On May 24, 1919, the drainage district altered its plans so as to provide for the drainage of the territory of the original district. This judgment recites the annexation of said lands and the confirmation of such annexation by Act 35 of the General Assembly of Arkansas of 1919. See Special Acts of 1919, page 52.

On June 28, 1919, the county court entered a judgment making a modification of the assessments because of the change of plans. The judgment recites that the estimated cost of the entire improvement has been increased to $3,392,000. On June 23, 1919, the county court confirmed the assessment made upon the lands annexed as well as the assessment upon all the other lands in the district. Nearly all the lands owned in the annexation to the district including the land of appellee belonged to the United States at the time the original district was organized in 1917. Practically all of the landowners in the annexation to the district had received their final certificates of entry prior to

the 23rd day of June, 1919, and all of them received their final certificates of entry or their patents during the year 1919.

[fol. 193] April 5, 1922, the Board of Directors filed a report in the county court that the assessment of benefits had become unequal and offered a complete re-assessment of benefits upon all the lands in the district including the annexed lands. On May 31, 1922 the county court entered an order establishing a re-adjustment of the assessment of benefits.

St. Francis Levee District was organized under an act of the Legislature of 1893. The act, as originally passed, was for the purpose of establishing that part of the St. Francis River basin lying within the State of Arkansas into a levee district. Acts of 1893, p. 24. The powers of the St. Francis Levee District are contained in that act and in the subsequent acts of the legislature supplementary and amendatory thereto. All the land in controversy was situated within the boundaries of the St. Francis Levee District as fixed by the original act creating it. Other facts will be stated or referred to in the opinion.

The Chancellor found the issues in favor of appellee, and it was decreed that the Drainage District No. 7, Poinsett County, Arkansas, and St. Francis Levee District be enjoined from attempting to make an assessment of benefits or from the enforcement of any assessment of benefits on the lands of appellee within such drainage district and levee district. To reverse that decree, an appeal has been duly prosecuted to this court.

Opinion

Hart, C. J. (after stating the facts):

The decree of the chancellor was based upon a holding [fol. 194] that the facts in the case at bar bring it within the principles of law decided in Lee v. Osceola & Little River Road Improvement District No. 1 of Mississippi County, Arkansas, 268 U. S. 647, in which it was held that a State can not impose special taxes or lands acquired by private owners from the United States, on account of benefits resulting from a road improvement made before the United States parted with its title.

It is earnestly insisted by counsel for appellants that appellee is estopped by his conduct from questioning the validity of the annexation proceedings under which his property was placed in Drainage District No. 7 of Poinsett county and an assessment of benefits made against it.

On the other hand it is claimed that under the principles laid down by the Supreme Court of the United States in the Lee case that the doctrine of estoppel can have no application because the land of appellee belonged to the United States at the time the petition for the annexation proceedings was signed by appellee and other landowners similarly situated.

We do not think that the Lee case is decisive of this question. In that case the road improvement district was formed under the general statutes of the State providing for the establishment of road improvement districts and the lands were what are known as lake lands and sunk lands just as the lands involved in the present appeal are known. These lands, however, were included in the organization of the district and benefits were assessed against them as land of riparian owners. Subsequently, the land was adjudged to belong to the United States, and the title [fol. 126] passed from the United States to private landowners. The improvement was completed at the time the title to the land was in the United States, and the United States did not grant the improvement district any authority to assess benefits against lands owned by the United States. Neither did the claimants of the land do any thing that could be said to have been a participation in the formation of the district or the construction of the improvement. Hence, there was no element of estoppel in that case.

In Wight v. Davidson, 191 U. S. 371, it was held that a constitutional right against unjust taxation is given for the protection of private property, but that it may be waived by those affected who consent to such action to their property as would otherwise be invalid. This principle was recognized by the Supreme Court of the United States in the Lee case, but the effect of the opinion is that there was no element of estoppel under the facts of that case.

The case of the Nevada National Bank v. Poso Irrigation District, 140 Cal. 344-347, is cited in support of the holding of the United States Supreme Court. In the Cali-

fornia case, it was said that if the grantee of the United States must take the land burdened with the liability of an irrigation district made to include it, without the consent of the government or the purchaser, it attaches a condition to the disposal of the property by the government without its acceptance or consent and which must in such cases interfere with its disposal.

We think the Lee case then expressly recognizes that the doctrine of estoppel may be invoked in a proper case like [fol. 196] the one under consideration, but it could not be applied under the facts of that case because there had been no assent to the imposition of the taxes by the United States or by its grantee.

It is not claimed that the United States assented to the imposition of the special taxes in the present case, but it is claimed that, after appellee became the beneficial owner of the land, he was guilty of such acts and conduct as would estop him from attacking the validity of the annexation proceedings and the subsequent assessment of his lands thereunder. It is true that appellee and others filed a petition in 1918 for the annexation of their lands to the drainage district, but the change of plans was not made and the assessment of benefits was not made until June 1919, at which time appellee and the other land owners who petitioned for the annexation had received final certificates of entry from the United States. When the certificate of entry was issued to appellee, he acquired the equitable title to the land and the legal title alone remained in the United States. The land, in effect, thus no longer belonged to the United States but to the purchaser. Witherspoon v. Duncan, 21 Ark. 240, affirmed in 4 Wall. (U. S.) 210.

In affirming the case, Mr. Justice Davis, speaking for the court, said:

"According to the well-known mode of proceeding at the land offices (established for the mutual convenience of buyer and seller), if the party is entitled by law to enter the land, the receiver gives him a certificate of entry reciting [fol. 197] the facts, by means of which, in due time, he receives a patent. The contract of purchase is complete when the certificate of entry is executed and delivered, and thereafter the land ceased to be a part of the public domain.

The government agrees to make proper conveyance as soon as it can, and in the meantime holds the naked legal fee in trust for the purchaser, who has the equitable title."

Continuing, the learned Justice said:

"That Congress has the entire control of the public lands, can dispose of them for money, or donate them to individuals or classes of persons, cannot be questioned. If the law on the subject is complied with, and the entry conforms to it, it is difficult to see why the right to tax does not attach as well to the donation as to the cash entry. In either case when the entry is made and certificate given the particular land is segregated from the mass of public lands and becomes private property. In the one case the entry is complete when the money is paid; in the other when the required proofs are furnished. In neither can the patent be withheld if the original entry was lawful."

"The power to tax exists as soon as the ownership is changed, and this is effected when the entry is made on the terms and in the modes allowed by law. If this were not so, those who, through the bounty of Congress, get a title to the soil, without money, would enjoy higher privileges and be placed on a better footing than the great body of persons who, by the invitation of the government, purchase lands with money. Such a discrimination could never have been contemplated by Congress."

[fol. 198] To the same effect, see Wisconsin Railroad Company v. Price County, 133 U. S. 496-505; and Bothwell v. Bingham County, 237 U. S. 642.

Pursuant to the annexation petition, the land of appelle and the land of others, comprising at least 3290 acres, were annexed to the original drainage district and brought under the operation of the act creating it. The landowners voluntarily asked for the privilege of becoming subject to all its provisions. In effect, they asked for the assessment of benefits on their land and that they should become subject to the provisions of the act just as the land contained in the original district. The commissioners of the drainage district assented to their request, and the county court acted

upon it and changed the formation of the district and the improvements to be made thereunder in a substantial way. In the very nature of things, the added district imposed a very much larger expense upon the property owners of the whole district in order to afford protection to the lands of appellee and others who desired to be brought under the provisions of the act creating the drainage district and to participate in the benefits to be derived therefrom. It was necessary to issue a very much larger bonded indebtedness in order to accomplish this purpose. The property owners in the original district assumed the larger additional indebtedness relying upon the acts and conduct of the petitioners. By petitioning for the annexation of their lands to the district, appellee and others declared that they would submit themselves to all the responsibilities and burdens imposed [fol 180] by the original act. They purposely caused the authorities to believe this as a matter of fact. Relying upon their acts and conduct, the commissioners largely increased the bond issue and expended money in the construction of the improvements in the amended district so as to reclaim and protect the lands of appellee and the other petitioners for the annexation from the floods. They permitted their lands to be assessed in June, 1919, after they had become the beneficial owners of them. In 1922 the commissioners, under the belief that the old assessments had become unequal, made a complete re-assessment of the benefits against all the lands of the district including those who had petitioned for the assessment. They proceeded with the work under the amended plans, and appellee and other landowners similarly situated enjoyed the benefits. To now permit them to deny the assurance given by their own acts and conduct, which was continued during the progress of the work, would work a fraud upon the drainage district and the landowners situated within its original boundaries, and this can not receive the sanction of law. The drainage district and the commissioners thereof had no reason to believe that the petitioners for the annexation would allege any invalidity in the law which they were asking to have extended for the protection of their land. The drainage district and all interested under the original act have been misled by the affirmative acts and conduct of

appellee and others petitioning for the annexation of their lands to the district.

Hence, we are of the opinion that appellee and those similarly situated are estopped from attacking the validity of [fol. 200] the annexation proceedings and the assessment of benefits against their lands authorized for the construction of the drainage district and levees contemplated under the act. Having expressly consented to the taxation of their land after they had become the beneficial owners thereof and the drainage district having acted thereon and made large expenditures in reliance upon their consent, such consent can not be withdrawn.

There is, however, no element of estoppel in the case against the St. Francis Levee District; for appellee, neither by his declaration nor conduct, did anything to induce the Board of Directors of the St. Francis Levee District to act in relation to the inclusion of his land within such district and to make an assessment of benefits thereon. If his land and the lands of others similarly situated are in the district and have become subject to an assessment of benefits for levee purposes, this results from the operation of law and not from any act or conduct of appellee and other landowners similarly situated.

It is not claimed that there is an Act of Congress allowing the lands in controversy to be assessed for levee purposes as are the other lands in the district. The St. Francis Levee District was created by the Legislature of 1893, and the powers of the board of levee directors are contained in that act and the acts supplementary and amendatory thereto. Section one of the original act provides that that part of the area of the St. Francis basin within the State of Arkansas is the territory included in the district. Acts [fol. 201] of 1893, p. 24. The act contemplates an annual assessment of all the lands in the district subject to special assessment for levee purposes. The record shows that the action of the Mississippi River, which is on the eastern boundary line of the district, continually causes changes to be made in the improvements. The channel of the river is continually shifting, and, in flood time, large portions of the levee are frequently destroyed and have to be replaced.

The banks of the river itself are continually changing, and every overflow causes unexpected changes in the channel of the river, in the banks, and in the levee.

The record shows that the plans for constructing the levees are of necessity constantly being revised to meet the changed conditions and that the levee has not been constructed up to the standard prescribed by the United States. In short, the changed situations caused by the flood waters make necessary a revision of construction plans so that no part could be completed according to the standard prescribed by the United States before it again become necessary to revise the plans. Indeed, the court will take judicial notice of the length, width and depth of the Mississippi River and the encroachment of the river upon the lands adjacent to it in times of flood. The court will also take judicial notice of the vast area of territory of the United States which is drained into the Mississippi River, and the result of the action of the river in flood times upon the banks and the levees along the bank. When all these matters are considered, it is perfectly evident that the levee in ques- [fol. 202] tion has ever become a complete improvement within the meaning of the Lee case. To so hold would place a too limited or restricted meaning upon the word "complete." The expression "completed improvement" is a relative term, and its meaning depends upon the connection in which it is used when read in the light of the object to which it refers. It was intended by the framers of the St. Francis Levee Act and the acts amendatory thereto that all lands within the boundaries of the district should fall under the provisions of the act as soon as they came to be privately owned. There has been no act of Congress allowing the lands of the United States upon which no final certificate has been issued to become subject to special assessments for levee taxes as was the case in Pierce v. Drainage District No. 17, 155 Ark. 89. Hence, as long as the lands now owned by appellee belonged to the United States, they were not subject to special assessment for levee purposes under the doctrine of the Lee case. When the final certificate was issued, however, the naked legal title only remained in the United States and the equitable title was in the grantee. The lands fell, by operation of law, within the provisions

of the act creating the St. Francis Levee District and were subject thereafter to the annual special assessments of levee taxes just as were all the other privately owned lands in the district.

The flood waters of the Mississippi River come down with resistless force and the consequent changes in its channel and the resultant encroachment on its levees make their construction and maintenance a continuing project, which [fol. 203] in the very nature of things can never be completed.

The result of our views is that the decree of the chancery court will be reversed, and the cause will be remanded with directions to dismiss the complaint for want of equity. It is so ordered.

[fol 204] In Supreme Court of Arkansas

Minute Entries

January 23, 1928.

Comes the appellee by its solicitors, and files a petition for rehearing, and prays for time in which to file a supporting brief; and said appellee is allowed by the Court one week from date in which to file such brief.

January 30, 1927.

The petition heretofore filed in this cause being called, is now submitted with the response and brief filed, and is by the Court taken under advisement.

[fols. 205-208] Petition for rehearing, covering four pages, denied Jan. 20, 1928, omitted from this print. It was denied and nothing more by order February 6, 1928.

[fol. 209] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING PETITION FOR REHEARING—February 6, 1928

Being fully advised, the petition for rehearing filed herein is by the Court overruled.

[fol. 210] Certificate of W. P. Sadler, Clerk of Supreme Court of Arkansas, to foregoing transcript omitted in printing.

[fol. 211] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 4, 1928

Now comes Exchange Trust Company as Executor of the Estate of Roy Rice, deceased, appellee in the above entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause, from the judgment and decree made and entered by the Supreme Court of Arkansas, on the 9th day of January, 1928, and its judgment denying petition for rehearing on same made and entered on February 6th, 1928:

I

The Supreme Court of Arkansas erred in holding that Appellant Drainage District No. 7, Poinsett County, by order of the County Court made and entered March 15, 1918, embodied in and confirmed by Act No. 35, p. 2, Special Acts of Arkansas, adopted February 3, 1919 could validly annex as an integral part of said Improvement District for all purposes thereafter land occupied by Appellee under the homestead laws of the United States, but for which no final certificate issued from the United States until February 14, 1919, and for which no patent issued until June 3, 1919.

Said holding is contrary to the spirit and purpose of the Homestead Acts of the United States and is repugnant to and in violation of Art. 1, Sec. 8, Par. 1, to Art. 1, Sec. 8, Par. 16, to Art. IV, Sec. 3, Par. 2, to Art. VI, Par. 2, and to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

II

The Supreme Court of Arkansas erred in failing to hold all assessments of benefits on land of appellee by Drainage District No. 7, and attempts to tax same as later embodied in and confirmed by Act No. 657, p. 1638, Special Acts of Arkansas, for 1923, repugnant to the Constitution of the United States and void as an attempt to tax lands of the United States.

III

The Supreme Court of Arkansas erred in holding that, because of acts or statements by him prior to issuance of final certificate of entry from the United States, appellee was or could be estopped from attacking the validity of the annexation proceedings and the assessment of benefits on his land by Drainage District No. 7, Poinsett County.

[fol. 212]

IV

The Supreme Court of Arkansas erred in holding that by failing to contest or appeal from assessments of Drainage District No. 7, Poinsett County, fixed on lands of appellee after the beneficial interest passed to him from the United States, and which were annexed to said District following petition signed by appellee before such beneficial interest passed to him, appellee is estopped to bring suit to cancel tax foreclosure decrees by said District against said land.

V

The Supreme Court of Arkansas erred in holding that the St. Francis Levee District, an Improvement District organized by Act No. 19, of the Acts of Arkansas for 1893, p. 24, and including within its boundaries the land of appellee, was entitled to tax said land after final certificate of entry from the United States issued February 14, 1919, and patent issued June 3, 1919.

Said holding is contrary to the spirit and purpose of the Homestead Laws of the United States; and is repugnant to and in violation of Art. 1, Sec. 8, Par. 1, to Art. 1, Sec. 8, Par. 16, to Art. IV. Sec. 3 Par. 2, to Art. VI. Par. 2, and to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

VI

The holding of the Supreme Court of Arkansas is in direct violation of and in conflict with the principle announced by the Supreme Court of the United States in Lee vs. Osceola and Little River Road Improvement District Number One, Mississippi County, (1925), 268, U. S. 643; 69 L. Ed. 1133, and therefore erroneous.

Wherefore said appellee prays that the said judgment and decree of the Supreme Court of Arkansas be reversed and that said court be ordered to enter judgment and decree affirming the decree of the lower court in said cause.

H. M. Cooley, Arthur L. Adams, Robert E. Fuhr, John S. Mosby, Attorneys for Appellee, Exchange Trust Company, as Executor of Estate of Roy Rice, Deceased.

[File endorsement omitted.]

[fol. 213] In Supreme Court of Arkansas

[Title omitted]

Petition for Writ of Error—Filed April 4, 1928

To the Honorable Jesse C. Hart, Chief Justice of the Supreme Court of Arkansas, and to the Associate Justices of said Court, and or to the Justices of the Supreme Court of the United States:

Exchange Trust Company as executor of the Estate of Roy Rice, deceased, appellee in the above entitled cause, shows by this petition that in the records, proceedings and decisions in the Supreme Court of the State of Arkansas,

the same being the highest Court of said State, in which a decision could be had in this suit, a manifest error has occurred, greatly to the damage of said Exchange Trust Company as executor of the estate of Roy Rice, deceased.

That, as appears in the record and proceedings there was drawn in question the validity of an authority exercised by the State of Arkansas, through certain Improvement Districts wherein it was attempted to assess and tax lands of the United States for the construction and maintenance of said improvements, and there was likewise drawn in question the validity of statutes of the State of Arkansas undertaking to authorize the assessment and taxation of lands of the United States for the construction and maintenance of said improvements, all being repugnant to the Constitution and the laws of the United States and in violation of the adjudication of the Supreme Court of the United States; all of which acts and questions appear in the records and proceedings of the case and are specifically set forth in the assignment of errors filed herewith.

Wherefore this petitioner prays that appeal be allowed, and that a transcript of record, proceedings and papers upon which said judgment and decree was rendered, duly authenticated, be ordered sent to the Supreme Court of [fol. 214] the United States, at Washington, D. C.; and that said Supreme Court of the United States may bring before it by this writ and or by writ of certiorari under the rules of such court in such cases made and provided, such record, proceedings and papers, that the same may be by said Honorable Court inspected and corrected in accordance with law and justice.

H. M. Cooley, Arthur L. Adams, Robert E. Fuhr, John S. Mosby, Solicitors for Exchange Trust Company, as Executor of the Estate of Roy Rice, Deceased, Petitioner.

[File endorsement omitted.]

[fol. 215] In Supreme Court of Arkansas

[Title omitted]

Order Allowing Appeal—Filed April 4, 1928

On this 4th day of April, 1928, the application of Exchange Trust Company as Executor of the Estate of Roy Rice, Deceased, appellee in this case, and petitioner for appeal, came on to be heard, said appellee being represented by counsel, and it appearing to the Court from the petition filed herein, and from the record filed therewith, that its application should be granted, and that a transcript of the record, proceedings and papers upon which the judgment of the Court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed, in order that such proceedings may be had as may be just.

Now, therefore, it is ordered that said appeal be allowed upon a bond being furnished by said appellee, conditioned according to law in the sum of $2,000.00, and that a true copy of the record, assignment of errors and all proceedings in the case in the Supreme Court of Arkansas shall be transmitted to the Supreme Court of the United States certified according to law, in order that said Court may inspect the same and take such action thereon as it deems proper according to law.

Jesse C. Hart, Chief Justice.

[File endorsement omitted.]

[fol. 216] Bond on appeal for $2,000.00, approved and filed April 4, 1928, omitted in printing.

[fol. 217] In Supreme Court of Arkansas

Writ of Error—Filed April 4, 1928

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment, of a plea which is in the Supreme Court of Arkansas, before you, being the highest court of law and equity of the said state in which a decision could

be had in the said suit between Drainage District # 7, Poinsett County, Arkansas and its Commissioners, and the St. Francis Levee District and its Board of Directors as Appellants and Exchange Trust Company as Executor of the estate of Roy Rice, deceased as Appellee, wherein was drawn in question the validity of a statute of or an authority exercised under said state on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was against their validity; and wherein was drawn in question the construction of various clauses of the Constitution of the United States, and the decision was against the title, right, privilege and immunity especially set up and claimed under such several clauses of the said Constitution of the United States; and wherein was drawn in question an adjudication of the Supreme Court of the United States, and the said decision was contrary to the principle declared in said adjudication; a manifest error had happened to the great damage of said Exchange Trust Company, Executor of the estate of Roy Rice, deceased, Appellee therein, as is said and appears by its complaint; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this 4th day of April in the year of our Lord, 1928.

Sid B. Redding, Clerk of the United States District Court, Eastern District of Arkansas, by W. P. Feild, D. C. (Seal.)

Allowed by Jesse C. Hart, Chief Justice of the Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 218] Certificate of lodgment omitted in printing.

[fol. 219] In Supreme Court of Arkansas

Stipulation Fixing Record on Appeal and Waiving Formal Issuance of Citation. Filed April 4, 1928

We, the undersigned, Cooley, Adams and Fuhr, as attorneys for Exchange Trust Company, executor of the Estate of Roy Rice, Deceased, appellee in the Supreme Court of Arkansas, and appellant on appeal from that Court to the Supreme Court of the United States; C. D. Frierson, as attorney for Drainage District No. 7 Poinsett County, and its commissioners, and Burk Mann and R. B. McCulloch as attorneys for St. Francis Levee District and its Board of Directors, appellants in the Supreme Court of Arkansas, and appellees on appeal from that Court to the Supreme Court of the United States, hereby stipulate and agree that said cause may be heard in the Supreme Court of the United States on the record as hereinbefore designated and that only the record as so designated shall be certified up and printed for the purposes of said appeal.

And we, the said C. D. Frierson as attorney for said Drainage District No. 7 of Poinsett County, its commissioners, and Burk Mann and R. B. McCulloch as attorneys for St. Francis Levee District, and its Board of Directors hereby waive formal issuance and service of citation on said appeal, acknowledging and accepting service of same as fully and with the same effect as though formally served.

Witness our hands this April 2nd, 1928.

Cooley, Adams & Fuhr, Attorneys for Exchange Trust Company, as Executor for Roy Rice, Deceased. Chas. D. Frierson, Attorney for Drainage District No. 7 and its Commissioners. R. B. McCulloch, Burk Mann, Attorneys for St. Francis Levee District and its Board of Directors.

[File endorsement omitted.]

[fol. 220] Return to writ of error omitted in printing.

Bill of costs omitted in printing.

[fol. 221] In Supreme Court of the United States

[Title omitted]

Statement of Points Relied on and Designation to Print Entire Record—Filed May 1, 1928

Comes Exchange Trust Company, Executor, by counsel and states on consideration of this cause in this Court its intention to rely upon the following points, to-wit:

I

The Supeme Court of Arkansas erred in holding that Appellant Drainage District No. 7, Poinsett County, by order of the County Court made and entered March 15, 1918, embodied in and confirmed by Act No. 35, p. 2, Special Acts of Arkansas, adopted February 3, 1919 could validly annex as an integral part of said Improvement District for all purposes thereafter land occupied by Appellee under the homestead laws of the United States, but for which no final certificate issued from the United States until February 14, 1919, and for which no patent issued until June 3, 1919.

Said holding is contrary to the spirit and purpose of the Homestead Acts of the United States; and is repugnant to and in violation of Art. 1, Sec. 8, Par. 1; to Art. 1, Sec. 8, Par. 16; to Art. IV., Sec. 3, Par. 2; to Art. VI., Par. 2, and to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

II

The Supreme Court of Arkansas erred in failing to hold all assessments of benefits on land of appellee by Drainage District No. 7, and attempts to tax same as later embodied in and confirmed by Act No. 657, p. 1638, Special Acts of Arkansas, for 1923, repugnant to the Constitution of the

[fol.222] United States and void as an attempt to tax lands of the United States.

III

The Supreme Court of Arkansas erred in holding that, because of acts or statements by him prior to issuance of final certificate of entry from the United States, appellee was or could be estopped from attacking the validity of the annexation proceedings and the assessment of benefits on his lands by Drainage District No. 7, Poinsett County.

IV

The Supreme Court of Arkansas erred in holding that by failing to contest or appeal from assessments of Drainage District No. 7 Poinsett County, fixed on lands of appellee after the beneficial interest passed to him from the United States, and which were annexed to said District following petition signed by appellee before such beneficial interest passed to him, appellee is estopped to bring suit to cancel tax foreclosure decrees by said District against said land.

V

The Supreme Court of Arkansas erred in holding that the St. Francis Levee District, an Improvement District organized by Act No. 19, of the Acts of Arkansas for 1893, p. 24, and including within its boundaries the land of appellee, was entitled to tax said land after the final certificate of entry from the United States issued February 14, 1919, and patent issued June 3, 1919.

Said holding is contrary to the spirit and purpose of the Homestead Laws of the United States, and is repugnant to and in violation of Art. 1, Sec. 8, Par. 1, to Art. 1, Sec. 8, Par. 16; to Art. IV, Sec. 3, Par. 2; to Art. VI, Par. 2, and to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

VI

The holding of the Supreme Court of Arkansas is in direct violation of and in conflict with the principle an- [fol. 223] nounced by the Supreme Court of the United States in Lee vs. Osceola and Little River Road Improvement District Number One, Mississippi County, (1925), 268, U. S. 643; 69 L. Ed. 1133, and therefore erroneous.

For the consideration of said points above designated said Exchange Trust Company deems necessary the entire record as designated in stipulation of counsel in the Supreme Court of Arkansas under date of April 2, 1928, and prepared by said Supreme Court of Arkansas and duly filed herein; excepting only the said stipulation and designation itself.

And said Exchange Trust Company, Executor, plaintiff in error herein, hereby specifically designates said record and directs that it be printed for due consideration of this cause in this Court.

Dated this April 26, 1928.

Cooley, Adams & Fuhr, by Arthur L. Adams, Attorneys for Exchange Trust Company, Executor, Plaintiff in Error.

We the undersigned, as counsel for Drainage District No. 7 Poinsett County, Arkansas, and its commissioners, and for said St. Francis Levee District and its Board of Directors respectively, do hereby acknowledge service of the foregoing and attached specification of points relied on and designation of record by Exchange Trust Company, Executor, Plaintiff in Error, acknowledging receipt of copy of same and waiving any other or further service of same.

Dated this April 26, 1928.

Chas. D. Frierson, Jonesboro, Ark., Attorney for Drainage District No. 7, Poinsett County, Arkansas, and Its Commissioners. Burk Mann, R. B. McCulloch, Attorneys for St. Francis Levee Board and Its Directors.

[fol. 224] [File endorsement omitted.]

Endorsed on cover: File No. 33,381. Arkansas Supreme Court. Term No. 114. Exchange Trust Company, executor of the estate of Roy Rice, deceased, plaintiff in error, vs. Drainage District No. 7, Poinsett County, Arkansas, and its Commissioners, and the St. Francis Levee District and its Board of Directors. Filed April 23d, 1928. File No. 33,381.

Supreme Court, U.S.
FILED
NOV 23 1928
CHARLES ELMORE CROPLEY
CLERK

No. 114.

In the Supreme Court of the United States

October Term, 1928.

EXCHANGE TRUST COMPANY, Executor of the Estate of Roy Rice, Deceased, *Plaintiff in Error,*

vs.

DRAINAGE DISTRICT No. 7, POINSETT COUNTY, ARKANSAS, and its Commissioners, and the ST. FRANCIS LEVEE DISTRICT, and its Board of Directors, *Defendants in Error.*

On Writ of Error to the Supreme Court of Arkansas.

BRIEF FOR PLAINTIFF IN ERROR.

J. A. TELLIER,
Little Rock, Ark.,
D. F. TAYLOR,
Osceola, Ark.,
JOHN S. MOSBY,
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In the Supreme Court of the United States

October Term, 1928.

EXCHANGE TRUST COMPANY, Executor of the Estate of Roy Rice, Deceased, *Plaintiff in Error*,

vs.

DRAINAGE DISTRICT No. 7, POINSETT COUNTY, ARKANSAS, and its Commissioners, and the ST. FRANCIS LEVEE DISTRICT, and its Board of Directors, *Defendants in Error*.

No. 114.

BRIEF FOR PLAINTIFF IN ERROR.

I.

The Opinion of the Court Below.

The opinion in the Supreme Court of Arkansas is reported in *Drainage District No. 7, Poinsett County et al. v. Exchange Trust Company, Executor*, (Jan. 9, 1928) 175 Ark. 934, 2 S. W. (2nd) 32 (R. 128-137).

II.

Jurisdiction.

1. The date of the decree in the Chancery Court of Poinsett County, Arkansas, is May 3, 1927 (R. 121-126).

The date of the judgment of the Supreme Court of Arkansas, reversing and remanding the decree of the trial court with directions to dismiss the complaint for want of equity, is January 9, 1928 (R. 128).

Petition for rehearing filed in due course in the Supreme Court of Arkansas, was denied February 6, 1928 (R. 137).

Petition for writ of error was duly filed and allowed and writ of error was duly issued and filed April 4, 1928 (R. 140-143).

2. Plaintiff in error here was plaintiff in the trial court and appellee in the Supreme Court of Arkansas. Defendants in error here are local improvement districts organized and existing by legislative enactment in the State of Arkansas.

St. Francis Levee District, Act No. 19, of the Acts of Arkansas for 1893, p. 24, and Acts amendatory thereof and supplementary thereto.

Drainage District No. 7, Poinsett County, Act No. 192 of the Acts of Arkansas for 1917, p. 1053, and Acts amendatory thereof and supplementary thereto.

Final certificate to the lands in question issued under the Homestead Act February 14, 1919 (R. 69). Patent issued June 3, 1919 (R. 69).

Plaintiff in error brought the original suit on the theory that both defendants in error included within their boundaries the lands described in the complaint, while title to same was in the United States of America, that

the inclusion of these lands by both improvement districts was with the express purpose and intent of charging them with special assessments for the construction and maintenance of the improvements for which the said districts were organized; that all preliminary steps of survey, etc., to ascertain and fix the quantum of such special assessment in Drainage District No. 7, Poinsett County, were completed while title remained in the United States; that both improvement districts undertook to fasten upon said lands liability for such special assessments while title remained in the United States. The complaint as amended stated in effect that the said acts of each and both of said improvement districts were in violation of the well established principle of immunity of lands of the United States from taxation, that the actions of the districts to that end were repugnant to Art. 1, Sec. 8, par. 1, of the Constitution of the United States; to Art. 1, Sec. 8, par. 16, of the Constitution of the United States; to Art. 4, Sec. 3, par. 2, of the Constitution of the United States; to Art. 6, par. 2, of the Constitution of the United States; to the 14th Amendment to the Constitution of the United States; that said acts of the district were directly in conflict with the principles announced by this Court in *Lee v. Osceola and Little River Road Improvement District Number One, Mississippi County*, (1925) 268 U. S. 643, 69 L. Ed. 1133 (R. 9-18).

The Supreme Court of Arkansas found and held that as to defendant in error Drainage District No. 7, Poinsett County, this plaintiff in error is estopped to maintain this suit by his acts and conduct prior to issuance of final certificate from the Government under the Homestead Act (R. 130-135).

The Supreme Court of Arkansas found and held that as to defendant in error St. Francis Levee District, the

improvement for which the district was organized was at all times *incomplete* while title to the lands in question remained in the United States; that therefore it was not within the principle of *Lee* v. *Osceola and Little River Road Improvement District No. 1, supra*, and plaintiff in error could not prevail (R. 135-137).

3. The jurisdiction of this Court is properly invoked under Sec. 237 (a) of the Judicial Code as amended (28 U. S. C. A., Sec. 344, Comp. St., Sec. 1214).

4. The following cases sustain the jurisdiction of this Court in this case:

Lee v. *Osceola and Little River Road Improvement District No. 1*, (1925) 268 U. S. 643, 69 L. Ed. 1133.

Myles Salt Co., Ltd., v. *Board of Commissioners of Iberia and St. Mary Drainage Dist.*, (1916) 239 U. S. 478, 60 L. Ed. 392.

Martin v. *Hunter's Lessee*, (1816) 1 Wheat. 304, 4 L. Ed. 97.

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Hamblin v. *Western Land Co.*, (1892) 147 U. S. 530, 37 L. Ed. 267.

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Whitney v. *California*, (1926) 274 U. S. 357, 71 L. Ed. 1095.

Mellon, Director General of Railroads, v. *O'Neil*, (Nov. 21, 1927) 275 U. S. 212, 72 L. Ed. —

III.

STATEMENT OF THE CASE.

Appellees St. Francis Levee District and Drainage District No. 7, Poinsett County, will hereinafter, for convenience, be designated respectively as the Levee District and the Drainage District.

The Levee District is an improvement district organized and established by Act No. 19 of the Acts of Arkansas for 1893, p. 24. Its purpose was the construction and maintenance of a part of the levee system found necessary for the control of the flood waters of the Mississippi River. The district, as organized, included within its boundaries an area of 1,000,000 acres, in the several Arkansas counties of Phillips, Lee, St. Francis, Crittenden, Mississippi, Cross, Poinsett and Craighead (R. 106). The land here in controversy has been at all times within the boundaries of the district.

The plan and purpose of this Levee District was the construction of a continuous levee along the right bank of the Mississippi River, beginning at the state line between Missouri and Arkansas and extending south along the Arkansas shore of the river.

Under the provisions of the original Act, the assessed benefit was $2.00 per acre, and the tax levy was 2 per cent of the betterment, producing an annual income of about 4 cents per acre per year. The assessed betterment and rate of tax has increased until at the present time the tax amounts to 25 cents per acre per year.

Final certificate under the Homestead Act was issued as to this land on February 14, 1919; patent issued June 3, 1919 (R. 69).

The Levee District sought to collect its taxes on the said lands for the years, beginning with 1921, and up to the filing of this suit, which seeks to cancel and set aside foreclosure decrees of the Levee District for non-payment of those taxes, and to enjoin further assessment and levy of tax (R. 125-126).

Defendant in error Drainage District was organized under and by virtue of Act No. 193 of the Acts of the State of Arkansas for 1917, p. 1053.

On January 17, 1918, the Board of Directors of said Drainage District filed in the County Court of Poinsett County, Arkansas, the assessment book showing the assessment of benefits and damages to all real property then in the district for the construction of the improvement according to plans filed by the engineers. February 25, 1918, was fixed by the court for the hearing of the assessment of benefits and damages after the publication of notice as required by law. Said hearing was duly had, pursuant to the order of the court, and notice published and assessments confirmed on the basis of the plans and specifications as originally filed (R. 31-34).

The plans of the Drainage District as originally filed contemplated the drainage of no lands east of the St. Francis River. The west bank of the river was to be protected by levee. Drainage District No. 17, a district of great magnitude in the adjoining county of Mississippi, was likewise established at the 1917 session of the Arkansas Legislature. It now appeared that that district, as planned, would discharge a great volume of water over the area east of the St. Francis River. This area, consisting of sixty two full sections of land and numerous fractional sections, aggregating 50,000 acres or more, includes the land in controversy and is the area later annexed to the Drainage District.

The minutes of the Drainage District and correspondence between its attorneys and representatives of the landowners in the area east of the St. Francis River disclose negotiations between these parties for the relief of this area as early as December, 1917 (R. 66, 72-76). It appears that the inhabitants of this area had considered the organization of a separate district, to protect the lands therein from the threatened overflow. However, this did not prove practical (R. 71).

At the meeting of the Board of Directors of the Drainage District, on December 20, 1917, following correspondence and conferences between its attorney and representatives of the area later annexed, resolution was adopted by the board to the effect that if a majority in land value or number of landowners within that area petitioned for annexation for inclusion in the district, the board would not object to or oppose such annexation but would consent to the same (R. 67-68).

Petition for annexation of the territory in question was prepared as provided by Section 10 of the organizing Act of the Drainage District (Act 193 of the Acts of Arkansas for 1917). This petition was executed by a majority in land value and in acreage, constituting a majority in the number of owners of the land in the area, and was signed by the entrymen in possession of the lands here in controversy (R. 28-30). This petition was duly filed in the County Court and by order of the County Court made and entered January 25, 1918, publication of notice of the filing of the same was directed and hearing on the same fixed for March 15, 1918 (R. 30).

On March 15, 1918, order was duly made and entered by the County Court of Poinsett County, annexing the whole area in question as a part of the Drainage Dis-

trict. Following the language of the petition, the court stated in its findings:

> "That said territory lies in a contiguous body and adjoins said Drainage District, and in order to properly and economically drain, reclaim and protect said territory and lands described above from storm and overflow water, it is necessary for the same to be annexed to and embraced in said Drainage District, and that all of said territory and lands will thereby be greatly benefited and enhanced in value."

The court stated in the decretal part of the order:

> "That said Drainage District and the Board of Directors, officers, engineers, attorneys, agents and employees of said Drainage District forthwith cause said territory and lands so annexed thereto to be drained, reclaimed and protected from storm and overflow water as fully and with like effect as if the same were originally incorporated in said district under the terms of the Act creating the same, and that there be levied against said territory and lands so annexed, in accordance with the benefits which the same will respectively receive, such benefits and assessments as may be necessary to pay its proportionate part of the cost of draining, reclaiming and protecting the same" (R. 35-36).

The annexation of these lands was validated and confirmed by Act No. 35 of the Special Acts of Arkansas of 1919, p. 52. This Act is in substance and effect identical with the wording of the annexation order of the court above referred to, and became a law February 3, 1919.

On July 12, 1918, the County Court of Poinsett County made an order which "assessed upon the real property

including lands, railroads and tramroads within said Drainage District, a tax sufficient to produce the sum of $2,824,277.50, being the estimated cost of the improvement. * * *"

By the same order the Drainage District was "authorized and empowered, directed and ordered to issue the bonds of said district in the sum of $1,400,000.00, and to secure the same by a pledge of the revenues of said district" (R. 92-95). The bonds issued pursuant to this order were dated January 1st, 1918 (R. 98).

On May 24, 1919, altered plans, specifications and assessments were duly filed in the County Court of Poinsett County. The report of engineers and the order of the court thereon shows a complete revision of plans and modification of the assessments based upon an exhaustive and lengthy survey of the entire district, including the territory annexed by order of the court March 15, 1918 (R. 37-42).

Thereafter and on June 23, 1919, following due publication of notice the altered plans as filed on May 24, 1919, and the modified assessments based thereon were duly confirmed and established by the court (R. 43-50).

The estimated cost of the improvement based on this last report of the engineer was $3,392,000.00, and a tax was duly authorized and levied sufficient to pay said amount (R. 52).

On September 1, 1919, the County Court of Poinsett County levied upon the lands in the Drainage District a tax sufficient to produce $7,871,352.50, which was recited as the estimated cost of the improvement. By the same order the issuance of bonds in the sum of $2,200,000.00 was authorized and directed (R. 90). This was the second order authorizing issuance of bonds following the

annexation of the additional territory, and recited that it superseded the levying order of July 12, 1918 (R. 98).

Thereafter and on April 5, 1922, were filed completely altered plans and assessments in said district (R. 57-59).

These modified plans and assessments were validated and confirmed by Act No. 657 of the Special Acts of Arkansas for 1923, p. 1638. The engineers in their report filed with these plans stated:

> "In order to carry out the plan described in the report of May 21, 1919, it would be necessary to divert the waters of the St. Francis River by means of a levee. Consequently on July 11, 1919, the directors made application to the engineers of the U. S. War Department for permission to build a diversion levee across the St. Francis River at the lower end of St. Francis Lake, in Section 10, Township 11 North, Range 6 East, in accordance with our report of May 21, 1919. On August 13, 1919, the Chief of Engineers, U. S. War Department, declined to grant such permission. Not being permitted to build the levee, the plan of May 21, 1919, cannot be carried out, therefore it has become necessary to provide other means of protection and to amend the plans so as to satisfy the U. S. engineers that the works will not interfere with the navigation in the St. Francis River.
>
> Since the filing of our report of May 21, 1919, a law has been enacted by the Congress of the United States permitting the taxation of certain Government lands within the district, which may be profitably reclaimed, but which have heretofore been omitted from the plan on account of the impossibility to enforce collection of the taxes necessary to pay for the reclamation. The bill referred to was approved by the President January 17, 1920, and is now effective" (R. 79-80).

The Act of Congress of January 17, 1920, referred to in this report of the engineers of the district, appears in 41 U. S. Statutes at Large, part 1, Chap. 47, p. 392. Designed and intended to authorize the Drainage District and Drainage District No. 17, Mississippi County, to assess and tax government lands in the exact status of the lands here in controversy, it was construed and declared valid by the Supreme Court of Arkansas in *Pierce v. Drainage District No. 17*, (1922) 155 Ark. 89, 244 S. W. 342. This Court declined to grant petition for certiorari seeking to review the decision of that court. 265 U. S. 568, 68 L. Ed. 1183.

The Act in question is entitled "An Act authorizing local drainage districts to drain certain public lands in the State of Arkansas, Counties of Mississippi and Poinsett, and subjecting said lands to taxation."

It provides, in part:

> "Sec. 1. That all of those unentered, unreserved public lands, and all of those entered lands for which no final certificates have been issued, within the areas hereinafter described, are hereby made and declared to be subject to the laws of the State of Arkansas, relating to the organization, government and regulation of drainage districts to the same extent and in the same manner, except as hereinafter provided, in which lands held under private ownership are or may be subject to said laws; provided, * * * said lands being * * * all of those unentered public lands, and all of those entered lands for which no final certificates have been issued in Poinsett County, Arkansas, in Townships 11 and 12 North, Range Six East, fifth principal meridian, according to the official surveys thereof, approved July 30, 1913.
>
> Sec. 2. That the construction and maintenance of canals, ditches, levees and other drainage works upon

and across the lands subject to the operation of this Act are hereby authorized, subject to the same conditions as are imposed by the laws of the State of Arkansas upon lands held in private ownership, and that the cost of construction and maintenance of canals, ditches, levees and other drainage works incurred in connection with any drainage project under said laws shall be equitably apportioned among all lands held in private ownership, all unentered public lands, and all lands embraced in unpatented entries affected by such project. * * *"

But all of Township 12 North, Range 7 East, Fifth Principal Meridian, which includes the land here in controversy, was omitted from the purview of the Act above cited and quoted.

The Drainage District undertook to foreclose the lands here in controversy for nonpayment of installments of special assessments levied by it for the year 1920, and each year thereafter until the filing of this suit.

This action is brought to cancel and set aside such attempted foreclosure decrees as clouds on the title, and to enjoin further assessments. (R. 124)

It is stipulated that this is a test case which shall determine the right and authority of these improvement districts to tax other lands in like status.

IV.

SPECIFICATION OF ERRORS.

1.

The Supreme Court of Arkansas erred in finding and holding that appellant Drainage District No. 7, Poinsett County, by order of the County Court made and entered March 15, 1918, embodied in and confirmed by Act No. 55, p. 52, Special Acts of Arkansas, adopted February 3, 1919, could validly annex as an integral part of said improvement district for all purposes thereafter land occupied by appellee under the homestead laws of the United States, but for which no final certificate issued from the United States until February 14, 1919, and for which no patent issued until June 3, 1919.

Said holding is contrary to the spirit and purpose of the Homestead Acts of the United States; and is repugnant to and in violation of Art. 1, Sec. 8, par. 1; to Art. 1, Sec. 8, par. 10; to Art. IV, Sec. 3, par. 2; to Art. VI, par. 2, and to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

2.

The Supreme Court of Arkansas erred in failing to find and hold all assessments of benefits on land of appellee by Drainage District No. 7, and attempts to tax same as later embodied in and confirmed by Act No. 657, p. 1638, Special Acts of Arkansas for 1923, repugnant to the Constitution of the United States, and void as an attempt to tax lands of the United States.

3.

The Supreme Court of Arkansas erred in finding and holding that, because of acts or statements by him prior to issuance of final certificate of entry from the United States, appellee was or could be estopped from attacking the validity of the annexation proceedings and the assessment of benefits on his lands by Drainage District No. 7, Poinsett County.

4.

The Supreme Court of Arkansas erred in finding and holding that by failing to contest or appeal from assessments of Drainage District No. 7, Poinsett County, fixed on lands of appellee after the beneficial interest passed to him from the United States, and which were annexed to said district following petition signed by appellee before such beneficial interest passed to him, appellee is estopped to bring suit to cancel tax foreclosure decrees by said district against said land.

5.

The Supreme Court of Arkansas erred in finding and holding that the St. Francis Levee District, an improvement district organized by Act No. 19 of the Acts of Arkansas for 1893, p. 24, and including within its boundaries the land of appellee, was entitled to tax said land after the final certificate of entry from the United States, issued February 14, 1919, and patent issued June 3, 1919.

Said holding is contrary to the spirit and purpose of the homestead laws of the United States; and is repugnant to and in violation of Art. 1, Sec. 8, par. 1, to Art. 1, Sec. 8, par. 16; to Art. IV, Sec. 3, par. 2, to Art. VI, par. 2,

and to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

6

The holding of the Supreme Court of Arkansas is in direct violation of and in conflict with the principle announced by the Supreme Court of the United States in *Lee v. Osceola and Little River Road Improvement District No. 1, Mississippi County*, (1925) 268 U. S. 643, 69 L. Ed. 1133, and therefore erroneous.

V.

ARGUMENT.

The argument as indicated in specification of errors may be summarized as follows:

A. Title to this land passed from the United States too late to subject it to assessments by either of the defendants in error.

B. No later act by anybody did, or could, impress this land with lien for such assessments; for

(1) There was not, and could not be, such alteration in the plan of improvement, following the organization of the district, as to change the identity of the district, and make succeeding assessments, in effect, assessments for a new improvement.

(2) There was no action amounting to *res adjudicata*.

(3) There was no estoppel.

Point "A."

Property of the United States is exempt by the Constitution from taxation under the authority of a state, so long as title remains in the United States.

25 R. C. L., pp. 113-114, and cases cited.

Van Brocklin v. *Anderson*, (1886) 117 U. S. 151, 29 L. Ed. 845.

Nevada National Bank v. *Paso Irrigation District*, (1903) 140 Cal. 344, 73 Pac. 1056.

Lee v. *Osceola and Little River Road Improvement District*, (1925) 268 U. S. 643, 69 L. Ed. 1133.

As has been stated by this Court in *Van Brocklin* v. *Anderson*, (1886) 117 U. S. 151, 29 L. Ed. 845, and subsequent cases:

> "Upon the admission of every state into the Union, the exemption of the lands of the United States from taxation by the state has been declared * * * sometimes in the form of a condition imposed by Congress, and sometimes in the form of a proviso to a proposition to grant the state certain lands or money, offered for its acceptance or rejection * * * in phrases somewhat varying, but substantially similar to one another."

These provisions are declaratory only of the rule of law long established beyond dispute, yet upon admission of the State of Arkansas into the Union, such proviso was made by the Congress of the United States and accepted by the State of Arkansas as one of the terms and conditions of its admission to statehood. See Crawford and Moses Digest, pp. 199, 200, 202.

At what stage in the perfection of title by a homestead entryman is the United States divested of title so as to render the land subject to tax under the authority of the state? The answer is, that when a qualified entryman has fulfilled the terms and conditions entitling him to patent from the United States and has received from the United States Land Office certificate showing the performance of these conditions, he thereby becomes vested with all the incidents of ownership, although the patent may not issue for some time thereafter. Apparent conflict in the cases or confusion in their phraseology arises from the fact that heretofore various methods have been prescribed by statute for disposal of government lands. Under these several statutes varying conditions must be performed before the claimant is entitled to patent from the Govern-

ment. The conditions and requirements in question may be clearing and improvement of the land over a period of years, under the General Homestead Act; or they may be the construction of a specified mileage of railroad under a special grant, as was true under the facts in *Wisconsin Central Railway Company* v. *Price*, (1890) 133 U. S. 496, 33 L. Ed. 687; and *Northern Pacific Railway Company* v. *Patterson*, 154 U. S. 130, 38 L. Ed. 934.

The cases are in harmony in the conclusion that whenever such conditions precedent are performed, as shown by proof satisfactory to the Government, and certificate of such performance is made in favor of the claimant, the execution and delivery of this certificate passes from the United States the equitable title to the land. The Government thereafter holds only the bare legal title as trustee for the claimant. See 26 R. C. L., pp. 96-98, Section 72-73; 22 R. C. L., p. 269.

Bothwell v. *Bingham County*, (1915) 237 U. S. 642, 59 L. Ed. 1157.

Irwin v. *Wright et al.*, (1922) 258 U. S. 219, 66 L. Ed. 573, and cases therein cited and reviewed.

In re Gallatin Irrigation District, (1914) 48 Mont. 605, 140 Pac. 92, 94.

Duncan v. *Newcomer*, (1896) 9 S. D. 375, 69 N. W. 580, and cases cited and reviewed.

Burcham v. *Terry*, (1892) 55 Ark. 398, 18 S. W. 458.

Belcher v. *Harr*, (1910) 94 Ark. 221, 224, 126 S. W. 14.

Gilkerson-Sloss Co. v. *Forbes*, (1891) 54 Ark. 148, 15 S. W. 191.

Schmidt v. *Drainage District No. 17*, (1919) 140 Ark. 541, 215 S. W. 614.

All of the lands here involved were entered under the Homestead Act. (U. S. Compt. Stat., Sec. 4531, R. S. 2290, as amended, Act March 3, 1891, c. 561, Sec. 5; and U. S. Compt. Stat. 4532, R. S. 2291, as amended, Act June 6, 1912, c. 153, U. S. C. A. Title 43, Secs. 162-164.) Under this Act proof, by the entrymen, of compliance with all conditions must be made to the satisfaction of the Land Office, and that satisfaction must be evidenced by *final certificate* of its acceptance and approval before the equitable title passes from the United States.

The Act of Congress of January 17, 1920, quoted above, attempting to authorize taxing of these lands, clearly assumes such lands as subject to tax only after issuance of final certificate.

We conclude, therefore, that no title could vest in plaintiff in error in this case, entitling him to convey the land in question or removing the land from the principle of immunity from taxation as land of the United States prior to the issuance of the final certificate under date of February 14, 1919. Even thereafter the certificate might be cancelled upon showing of fraud in its procurement.

Were any acts of defendants in error Levee District and Drainage District, prior to February 14, 1919, violative of the principle of immunity of this land of the United States from taxation?

As stated above, the record shows negotiations between the authorized representatives of landowners in the later annexed area, and of defendant in error Drainage District looking to its annexation as early as December, 1917 (R. 66, 72-76).

On December 29, 1917, resolution was adopted by the Board of Directors of the Drainage District consenting to the annexation if same should be perfected under the provisions of the organizing act of the district (R. 67-68).

On January 25, 1918, petition was filed for annexation by the landowners in the area later annexed. This was only eight days after the filing of the original assessment book with the Board of Directors of the Drainage District, and at least thirty days before the date set for hearing on such assessments and confirmation of the same (R. 31-34).

The order of annexation as above cited and quoted under date of March 15, 1918, directed the Drainage District and all of its agents forthwith to cause such annexed territory to be drained and reclaimed, the same as though included within the original boundaries of the district (R. 35-36).

The so-called Curative Act of February 3, 1919 (Act No. 35, Special Act of Arkansas, 1919, p. 52), became a law eleven days before final certificate issued (R. 55). It confirmed and validated the annexation. Section 2 of the act likewise validated and confirmed all assessments made, including, of course, the levying order of July 12, 1918.

On May 7, 1918, following the annexation order of March 15, 1918, the United States District Court for the Eastern District of Arkansas had before it the question of timber rights on certain lands including the land here in controversy. In the case of *United States of America* v. *H. Blumenthal et al.*, that court decreed that the United States was the owner of and entitled to the possession of the land, and enjoined the defendants, their agents and attorneys from asserting any right, title or interest in or to the same, or any part thereof, or from committing any trespass thereon (R. 103-106).

Section 29 of the Organizing Act (Act 193, p. 1053, Special Acts of Arkansas, 1917) provides:

> "All bonds issued by the Board under the terms of this act shall be secured by a lien on all lands in the district * * *."

As pointed out above, the first levying order, dated July 12, 1918, directed the issuance of bonds in the sum of $1,400,000.00. True, these were dated January 1, 1918. In the meantime, the record reflects the fact that immediately following the annexation order of March 18, 1918, the engineers and officers of the district began the surveys and investigation incident to enlarging and revising plans, specifications and assessments, to accommodate the additional territory.

It is common knowledge that such a task must take months. Yet on May 24, 1919, and prior to the issuance of patent from the government on June 3, 1919, the engineers filed such completely revised plans, "accompanied by maps, plans, profiles and specifications, showing the location of all ditches, levees and other improvements and duly describing their character." On the same day was filed the revised assessment book, containing assessments on all the annexed territory. The court found in that same order, "that under the mandate of said Act No. 35, of the General Assembly of Arkansas, session of 1919, and also by the judgment of this Court on March 15, 1918, it became the duty of the board to provide drainage for the additional territory hereinbefore described" (R. 38).

It is true that the formal levying order, dated September 1, 1919, following the apportionment of assessments at this time recited that it superseded the original levying order, dated July 12, 1918 (R. 96).

This is but in harmony with the sentiment, theory and declaration of all of the activities of the Drainage District.

We submit that the unquestioned effect of these activities is to fasten upon the land annexed, the same incidents and liabilities as though it had been originally incorporated within the Drainage District. If the levying order of September 1, 1919, was in lieu of the original levying order, it covered the bonds issued under the original levying order. They were outstanding and could not be recalled.

The conclusion then, is that this subsequent levying order based upon the exhaustive survey of the Drainage District, including the annexed area, fastened upon the whole district the lien which was declared under Section 29, of the organizing Act, upon all lands in the district, to secure bonds issued.

The acts of the Drainage District above detailed, including as they do, steps basic, fundamental and indispensable to the mere apportionment of the assessments, which alone was done after the title left the Government, are void under the doctrine of *Van Brocklin v. Anderson* (1886) 117 U. S. 151, 29 L. Ed. 845, 6 Sup. Ct. 670; of *Lee v. Osceola and Little River Road Improvement District No. 1*, (1925) 268 U. S. 643, 29 L. Ed. 1133; of *Nevada Nat. Bank v. Paso Irrigation District*, (1903) 140 Cal. 344, 73 Pac. 1056, and cases therein respectively cited.

The court stated in *Nevada National Bank v. Paso Irrigation District, supra*:

> "If the Act of the Legislature under which the district was organized had expressly declared that public lands of the United States situated within the exterior boundaries of an irrigation district should

> be a part thereof and assessed for its proportion of the liabilities of the district, no one would hesitate to say that such provision would be void."

Yet we have in the case at bar a judicial declaration that the addition of this property to a drainage district is of the same force and effect as if done under the original organizing act of the Legislature. That same order directs that assessments be levied against it because of such annexation. More than that, we have the subsequent Legislative Act of February 3, 1919, confirming, validating and adopting, as though set out in full in that act, the finding and order of the court. In substance we have a situation identical with that which the California Court says no one would hesitate to pronounce void. And that case is cited with approval by the United States Supreme Court in the Lee case.

In *Houck v. Little River District*, (1915) 239 U. S. 254, 263, 60 L. Ed. 266, it was urged, as in the case at bar, that the mere inclusion of lands within the improvement district was in itself no exercise of the taxing power, no imposition of lien. This Court there stated:

> "The plaintiffs in error urge that the determination at the time the district was organized was merely preliminary and tentative with respect to the lands to be included, and that assessments according to ascertained benefits for the purpose of meeting the cost of works and improvements are reserved for subsequent proceedings, upon notice, after surveys have been made and the plan of drainage has been definitely adopted. It is true that the elaborate inquiry which is to follow the organization of the district may show the advisability of bringing in other lands * * * and the state undoubtedly does postpone the assessment of the cost of works and

improvements until the plan of drainage has been decided upon and benefits have been determined accordingly. But none the less, the organization of the district takes effect when it is duly constituted by the judgment of the court. The owners whose lands are embraced in the district as proposed, and who have not signed the articles, are summoned and their objections to the organization and to the inclusion of their lands are heard. As a public corporation, with defined membership, the district, when established, is empowered to go forward with the expert investigations and surveys which, of necessity, must precede the adoption of a complete scheme. The outcome of these studies cannot be absolutely predicted; they may even result in the abandonment of the project. But probable feasibility has been shown, and the district in consequence, organized. The preliminary work must then be done and its cost must be met. It is work undertaken by the district."

See also *Myles Salt Co. v. Board of Commissioners of Iberia and St. Mary's Drainage District*, (1910) 220 U. S. 478, 60 L. Ed. 392, where this Court held that the inclusion within the boundaries of an improvement district, for the purpose of taxation, of lands which could not be benefited directly or indirectly by the drainage improvement was a violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

A study of the declarations of the Supreme Court of Arkansas on similar facts will show that they are not inconsistent with this principle.

St. Louis Southwestern Ry. Co. v. Board of Directors of Red River Levee District No. 1, (1907) 81 Ark. 562, 99 S. W. 843.

Coffman v. *St. Francis Drainage District*, (1907) 83 Ark. 54, 103 S. W. 179.

Moore v. *Board of Directors of Long Prairie Levee District*, (1911) 98 Ark. 113, 135 S. W. 819.

St. Louis Iron Mountain & Southern Ry. Co. v. *Board of Directors of Levee District No. 2 of Jackson County*, (1912) 103 Ark. 127, 145 S. W. 892.

Bush v. *Delta Road Improvement Dist. of Lee County*, (1919) 141 Ark. 247, 216 S. W. 690.

But in the case at bar, it was more than a mere inclusion of the land in question within the boundaries of the improvement district, with the well defined and clearly declared purpose of subjecting the same to a tax for the construction of the improvement. There were overt acts over practically the whole period from the date of the annexation order of March 15, 1918, until the filing of the assessment of May 24, 1919. Beyond question, the bulk of the surveys over the district as extended by the annexation Act, were made prior to February 14, 1919, the date of issuance of final certificate for the lands in question. If, for any reason, there had been an adverse report filed on May 24, 1919, stating in effect that the land annexed was impossible of improvement within the scope of the purpose and plans of the drainage district, still all lands then incorporated within the district would have been charged with a tax to pay such preliminary survey. Section 39 of Act No. 193, of the Acts of Arkansas, for 1917, p. 1053, is as follows:

> "If for any reason the district shall not proceed with its work, an assessment of the benefits that would have accrued if the improvement had been

made shall be made, as provided in this Act, and the preliminary expenses incurred shall be paid by a tax to be protected according to the benefits as assessed on the real property in the district, and it shall be collected by a receiver to be appointed by the Chancery Court of Poinsett County, upon the application of any creditor."

Under the holding of the Arkansas Court in *Arkansas Louisiana Highway Improvement District v. Pickens*, (1925) 169 Ark. 603, 276 S. W. 355, such indebtedness would constitute a charge upon the whole district, and not upon the separate tracts of land within the district.

We submit that there is presented to the court here a clear violation of the principles underlying the decision in the case of *Lee v. Osceola and Little River Road Improvement District No. 1*, (1925) 268 U. S. 643, 69 L. Ed. 1133, and that what was done was certainly calculated to hinder the disposition of these lands when the title was still vested in the United States. See also *Page and Jones, Taxation by Assessment*, Section 1066, 1068, 1072-1073.

The Levee District.

The case of the Levee District is properly considered at this time. The Supreme Court of Arkansas, adopting the theory of the attorneys for the Levee District, stated that its case could not be governed or even affected by any of the conditions to be considered under Point "B" of this brief. That court, in its opinion, expresses the basis of its decision with reference to the Levee District in its one statement, that

> "When all these matters are considered, it is perfectly evident that the levee in question has never

become a complete improvement, within the meaning of the Lee case" (R. 136).

The court clearly assumes that the doctrine of the Lee case is applicable only when the improvement in question is completed before title passes from the Government.

It assumes further that the improvement undertaken by the Levee District was an incomplete improvement. The court was in error in both assumptions. The doctrine of the Lee case cannot properly be limited to those cases where the improvement has been completed before the title had passed from the United States. If the Lee case is not based upon lack of power over the lands, by the state, at the time of the formation of the improvement district, it is without any logical basis. The lands here in question were included within the boundaries of the Levee District once and for all under the terms of the organizing Act of 1893. No further description or identification of the lands was attempted when the Levee District undertook to place them on its tax lists. It contends its tax is levied from year to year, and therefore no lien or burden relates back beyond the annual levy of the particular tax. Upon this theory, immediately upon the passing of the title from the United States Government to a private individual, the particular land so conveyed by the United States is thereafter taxed by the Levee District. As hereinabove indicated, the first annual tax was about four cents an acre. When this land was placed upon its tax books by the Levee District, the annual tax was twenty-five cents an acre, as it now remains. Attorneys for the district argue that these lands are, by virtue of the tax levied upon them, from the time of the passing of the title from the United

States Government, merely paying for betterments then and thereafter accruing. An examination of the outstanding bond issues of the Levee District discloses the fact that, beginning with 1903, there are bond issues outstanding, partially or wholly unretired up to 1919, the year this land passed from the Government. Bonds outstanding and unretired over that period, amount to $4,232,000.00 (R. 118). It is for the payment of this indebtedness incurred for improvements over the period while these lands were lands of the United States Government, that a fair proportion of the current tax was levied upon them by the Levee District, as soon as the title passed to private individuals. Since June 3, 1919, the date when patent issued for these lands, bonds have been issued by the Levee District in the total sum of $1,300,000.00, or less than one-third of the amount outstanding, issued while title to these lands was in the United States. The lands in question were included within the district without any right to be heard upon that question. Two-thirds of the indebtedness for which the Levee District would now tax these lands, was incurred for improvements constructed before the lands passed from the Government. If the position of the Levee Board is sustained, grantees of the United States must take land within the confines of that district burdened with the tax to pay for improvements of the Levee District for a period of twenty years preceding.

We submit that this is in violation of the principle of the Lee case as developed above in the argument against the contention of the Drainage District. The contention is contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States, in that it operates to impose a tax upon lands which could not speak for themselves with reference to the construction of the improvement. Yet two-thirds of the

tax attempted to be levied is for construction over the period while the lands could not be represented in any protest before the Levee District.

We submit that for these reasons, the Levee Board has no power to tax these lands.

Were this Court to limit its utterance to cases where under the facts, the improvement is completed, the Levee District would still be without defense.

The levee over the period since it became a continuous embankment along the shore of the river has been performing its function fairly well. Unusual floods, such as those of 1913 and 1927, have broken it, and possibly have gone over its top. Repair and maintenance will be necessary as indicated by the testimony in the record on behalf of the district. However, none of the facts set out in the record could make it, under any construction of its organizing act, or of the Lee case, an incomplete improvement not only for thirty years, but for all years to come. This would be the effect of the argument of the attorneys for the Levee District. It is provided in the organizing act (Acts of 1893, p. 24, Sec. 20):

> "For the purpose of keeping the levee in said district in repair, after the levee contemplated by this act shall have been completed, and to meet the incidental and contingent expenses of the district, there shall be levied and collected * * *"

We submit that the Levee District cannot be differentiated from the Drainage District, and for the reasons above developed with reference to the latter, is without power to tax these lands.

Point "B."

The defendants in error having violated the constitutional immunity of these lands by assessment for the improvements in question, the lands cannot thereafter at any stage of the improvements be impressed with liability for their construction or maintenance.

The defendant Drainage District pleads such alteration in the plan of its improvement as to subject the land in any event thereafter, to tax. This theory was argued at length in the trial court. It is a matter of general law that an improvement district cannot change the entity established by the organizing act. Reassessments may be made on changed plans, it is true; and they may be validated by Curative Act. However, the reassessment relates back to the organization of the district and all persons dealing with the property following the organization of the district, but prior to the reassessment, are charged with liability for it. That is, it attaches to the land as a charge, the same as though levied in connection with the original organization and assessment. This general principle is recognized in *Page & Jones on Taxation by Assessment*, Section 971, as follows:

> "The fact that property has been sold after the original assessment was levied, and before the reassessment is made, to one who has paid value and has not actual notice of the proceedings for reassessment, does not prevent the reassessment from being a lien upon such property; since, if the proceedings are properly conducted, there is a constructive notice to all purchasers of the fact of the public improvement, and of the resulting liability to pay for the benefits received."

This Court has stated that the effect of a reassessment is a question of state law not reviewable by it. *St. Louis*

and Kansas City Land Company v. *Kansas City*, (1916) 241 U. S. 419, 60 L. Ed. 1072. The overwhelming, if not unanimous, weight of authority in Arkansas, is to the effect that a deviation from the original purpose for which the improvement district was organized, such as will change its identity, invalidates the district.

Section 7 of the organizing act (Act 193, 1917, p. 1060) provides that the Board may at any time alter the plan of the improvement, "but so as not to change essentially the character of the work." This Section is identical in effect and substance with the corresponding provision for alteration of plans in the General Drainage Act of Arkansas (Crawford & Moses Dig., Sec. 3025). Therefore, adjudications under the General Drainage Act are directly in point in the case at bar.

The Supreme Court of Arkansas in *Indian Bayou Drainage District* v. *Walt*, (1922) 154 Ark. 335, 242 S. W. 575, holds in effect that no alteration or change in the plan of the improvement is valid if the same "is not incidental to the original drainage system." The same principle is recognized and followed in *Bayou-Meto Drainage District* v. *Ingram*, (1924) 165 Ark. 318, 264 S. W. 947. The Arkansas Court has held to that principle in connection with every type of public improvement whenever it has been called upon to pass upon the question. We submit a few of the numerous cases so holding:

See *Higginbotham* v. *Road Improvement District No. 2*, (1922) 154 Ark. 112, 241 S. W. 866.

Ryder v. *Warrick*, (1918) 133 Ark. 491, 202 S. W. 831.

Haut v. *Harvey*, (1918) 135 Ark. 102, 204 S. W. 600.

Carson v. *Road Improvement District*, (1921) 150 Ark. 379, 234 S. W. 257.

Cooper v. *Hogan*, (1924) 163 Ark. 312, 260 S. W. 25.

Price v. *Street Improvement District No. 335*, (1925) 169 Ark. 787, 276 S. W. 861.

The law is clearly settled to the effect that while the commissioners of an improvement district may alter the plans in order better to carry out the improvement as originally contemplated, they are wholly without power or authority to change the plan of the improvement to a wholly different one.

As a matter of fact, a careful study of the record is practically conclusive to the effect that the officers and agents of the district made the alteration of 1922 only because it was necessary for reasons beyond their control. The report of the engineers under date of April 5, 1922, quoted above, sufficiently explains the situation (R. 79-80). Change was made because of failure of the War Department of the United States to grant permission to build the diversion levee across the St. Francis river, in accordance with the original plans. The St. Francis river being a navigable stream, is under the jurisdiction of the War Department. The change did not mark any fundamental change in the purpose and incidents of the district; nor was it so intended.

Estoppel.

Estoppel is pleaded by the Drainage District as against plaintiff in error and others in like position. The Supreme Court of Arkansas reversed the trial court and expressly sustained the Drainage District on this ground (R. 130-135).

The language of the opinion does not attempt to distinguish between the various elements of estoppel urged

by the Drainage District, such as inconsistent legal position, *res adjudicata* and estoppel by laches. That court treats the record as raising an estoppel *in pais*. If there were any estoppel, it must be of that nature. There could be no *res adjudicata* with reference to a judgment or decree, void in its inception. It is subject to attack collaterally. *Page & Jones, Taxation by Assessment*, Section 927.

Futhermore, estoppel by inconsistent legal position, is not governed by different principles than an estoppel *in pais* and all that may be said with reference to estoppel *in pais* applies to any claim of estoppel by inconsistent legal position. It is the well settled rule that the doctrine of inconsistent legal position has no application where the knowledge or means of knowledge of both parties is equal, nor in case of mistake; nor has it any application to change of position with respect to matters of law. If there was change of position here, it was with respect to the legal rights and liabilities as between the Drainage District and plaintiff in error. See 21 C. J., pp. 1223-1225.

Mr. Pomeroy has defined estoppel of this nature and, as will appear hereafter, his definition is in harmony with adjudications of this Court upon facts such as we now have before us. See *Pomeroy on Equity (3rd Ed.)*, Sec. 803, 804, 805 and 806, pp. 14-19-32.

In discussing the application of the principle of estoppel where the title to real estate is involved, Mr. Pomeroy states that it must appear that the other party was not only destitute of all knowledge of the true state of the title, but of all means of acquiring such knowledge.

In *Steele v. St. Louis Smelting and Refining Company*, (1882) 106 U. S. 447, 455, 456, 27 L. Ed. 226, 229, 230, this Court had before it facts almost identical with the facts in the case at bar. Action was brought by a patentee to recover possession of mineral land, for which

he had been granted mineral patent. The defendant pleaded ownership by virtue of a townsite entry, and by counterclaim pleaded estoppel because of valuable improvements to the property over a period of years. The undisputed facts showed that from 1860 until 1879 the patentee stood by, knowing that defendant was making valuable improvements upon the property; that knowing this, he made application for patent in August, 1870, and remained silent thereafter while defendant was improving the property until issuance of patent in 1879. During that period the defendants had expended $5,000.00 or more in improving the property. This Court stated, in considering the plea of estoppel, in that case:

> "These allegations are very far from establishing such an equity in the defendants as to estop the patentee and those claiming under him from asserting the legal title to the premises. These matters could not operate to estop the Government in any disposition of the land it might choose to make. Its power of alienation could not be affected until the defendants had performed all the acts required by law to acquire a vested interest in the land, and it is not pretended that they took any steps to secure such an interest. Whatever right, therefore, the Government possessed, to use or dispose of the property, freed from any claim of the defendants, it could pass to its grantee.
>
> The principle invoked is, that one should be estopped from asserting a right to property, upon which he has, by his conduct, misled another, who supposed himself to be the owner, to make expenditures. It is often applied where one owning an estate stands by and sees another erect improvements on it in the belief that he has the title or an interest in it, and does not interfere to prevent the work, or inform the party of his own title. There is in such conduct a manifest intention to deceive, or such gross

> negligence as to amount to constructive fraud. The owner, therefore, in such a case will not be permitted afterwards to assert his title and recover the property, at least without making compensation for the improvements. But this salutary principle cannot be invoked by one who, at the time the improvements were made, was acquainted with the true character of his own title or with the fact that he had none. *Grant* v. *Virginia Coal and Iron Co.*, (1876) 93 U. S. 326, 23 L. Ed. 927; *Henshaw* v. *Bissell*, (1873) 18 Wall. 271, 21 L. Ed. 835. It will not be pretended that the defendants did not understand all about the title to the land; they knew that it was vested in the United States."

Both of the cases cited in the Steele case hold that where the estoppel relates to the title of real property it is essential to the application of the doctrine that the party claiming to have been influenced by the conduct or declarations of another was himself not only destitute of knowledge of the true state of the title but also of any convenient and available means of acquiring such knowledge. The same principle is recognized in *El Paso Live Stock Commission Company* v. *Colo. Live Stock Commission Company*, (1889) (C. C. A., 8th Cir.) 171 Fed. 20, 26. It was re-declared by this Court in *State of Oklahoma* v. *State of Texas*, (1924) 268 U. S. 252, 257-8, 69 L. Ed. 937, 943-4. See also *Bloomfield* v. *Charter Oak Bank*, (1886) 121 U. S. 121, 135, 30 L. Ed. 923.

Consider briefly with the above principles in mind the record in the case at bar. A review of the opinion of the lower court reveals that its decision with reference to the Drainage District is based upon the premise that the land of plaintiff in error and those in like status, stated to be less than four thousand acres, constituted by far the larger portion of the annexed territory. This error

in their premise was sharply challenged in the petition for rehearing in that court, mentioned in the printed record, p. 137, but by the clerk omitted from that record. The record before the lower court disclosed clearly, as hereinabove stated, that the annexed territory consisted of approximately 50,000 acres. The printed record before this Court shows that it included a large acreage in addition to the Government lands annexed (R. 105).

Therefore the assumption of the Supreme Court of Arkansas that the 3,240 acres was the acreage principally benefitted and for which the Drainage District changed its plans and incurred additional expenditures is erroneous (R. 130-135).

Again, the Drainage District most certainly had equal means, with plaintiff in error, of knowing the status of the title over all the period from the time of its organization until the patent, on June 3, 1919. Not only did it have equal means with plaintiff in error of knowing the title, but the record reflects the fact that it took into consideration the status of the title. The report of its agents, the engineers, dated March 28, 1922, expressly recognizes that the district had no power or authority to tax Government lands within the district in the status of the lands here in controversy prior to the Act of January 17, 1920. They stated that those lands had for that reason theretofore been omitted from the plan of improvement (R. 80).

Very evidently the Drainage District had overlooked the fact that these lands were omitted from the purview of that Act of Congress of January 17, 1920. However, that misapprehension was not the result of any fraud or deceit on the part of plaintiff in error, but rather of the negligence of the Drainage District.

The petition for annexation, so stressed by the Drainage District, did not show unusual anxiety or activity on

the part of plaintiff in error for annexation to the district. It was not a condition originated by the landowners in the area later annexed, but was executed as one of the requirements of the organizing statute of the Drainage District, for the annexation of any territory to that district. Section 16 of Act 193 of the Acts of Arkansas for 1917, pp. 1053, 1067, provides that land outside of the boundaries of the district, desiring to be included within the district, shall be annexed by order of the County Court when a majority in land value, acreage or number shall have petitioned said court for annexation. A majority in number, acreage and value, of which the lands here involved are a small percentage, did so petition, as one of the incidents of annexation prescribed by the Act.

We submit that the necessary elements of estoppel are not present in the case at bar. This conclusion is correct: first, because there was no willful deceit on the part of plaintiff in error and others in like status, nor was their conduct grossly negligent so as to be tantamount to deceit or fraud under the holding of the above cases. In the second place, the facts which are alleged to have deceived the Drainage District, namely, the status of the land and the legal right to tax the land, or include it within the district, were equally available to the Drainage District as to plaintiff in error.

The equitable doctrines of estoppel and relation are properly invoked by a court of equity to prevent inequity. But these doctrines can never be invoked to override a positive rule of law. The decision of the Supreme Court of Arkansas in favor of the Drainage District upon the doctrine of estoppel would permit that to be done indirectly which cannot be accomplished directly. It would permit the State of Arkansas, through its subordinate agency,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

EXCHANGE TRUST COMPANY, EXECUTOR OF THE ESTATE OF BOY RICE, DECEASED, PLAINTIFF IN ERROR,

vs.

DRAINAGE DISTRICT No. 7 POINSETT COUNTY, ARKANSAS, AND ITS COMMISSIONERS AND THE ST. FRANCIS LEVEE DISTRICT AND ITS BOARD OF DIRECTORS, DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

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Chas. D. Fleeman,
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For the Drainage District.

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No. 114.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

EXCHANGE TRUST COMPANY, EXECUTOR OF THE ESTATE OF ROY RICE, DECEASED, PLAINTIFF IN ERROR,

VS

DRAINAGE DISTRICT No. 7 POINSETT COUNTY, ARKANSAS, AND ITS COMMISSIONERS AND THE ST. FRANCIS LEVEE DISTRICT AND ITS BOARD OF DIRECTORS, DEFENDANTS IN ERROR.

ADDITIONAL STATEMENT OF FACTS BY DEFENDANTS IN ERROR.

First. Correction of statement of plaintiff in error.

In the statement and brief of plaintiff in error, there are several recitals that might leave the impression that benefits were assessed against the lands in controversy, tax levies made upon those benefits, plans filed for improvements, and bonds issued prior to the

date of the final certificate of entry to Roy Rice, the person who entered these lands under the homestead laws. The date of that final certificate of entry was February 14, 1919.

These erroneous implications might arise from page 6 paragraph 3 of brief of plaintiff in error; page 8, the last paragraph on the page; page 20, first paragraph, and page 20, third paragraph; page 21, second paragraph, giving the date of the first bond issue.

We realize the great difficulty of fairly stating the facts in a complicated case in brief form, but justice to our clients compels us to correct these inferences in the most emphatic manner. We therefore, want to make it very clear that none of the lands embraced in the controversy were included within the original boundaries of the district and they were not included within the district until an order of the County Court of Poinsett County rendered upon the petition of the owners of such lands upon March 15, 1918. This is made very clear in the stipulation (Rec. p. 27-28), as follows:

> "No land in Township 12 North, Range 7 East, was included within the original boundaries of the said drainage district as described in said Act 193.
>
> "Said drainage district, after organization, filed plans on January 17, 1918, *not including any contemplated improvement east of the west bank of the St. Francis River.* Said report of the original plans appears on County Court Record "H," p. 348 and the plans were approved by the county court on January 17, 1917 as shown in County Court Record "H," pages 364 to 365.
>
> "On January 22, 1918, the drainage district reported to the county court their assessment of benefits and damages to lands at that time em-

> braced within the proposed improvements and the same is covered by County Court Record 'H,' page 366. *No assessments were filed as to any land in Township 12 North, Range 7 East, at that time*" (italics ours).

This statement of the stipulation is borne out further by the petition of Roy Rice and others to be included within the district (Rec. pp. 28-30), and the further provision of the stipulation (Rec. p. 31) as follows:

> "The foregoing petition and order were the first steps taken towards the annexation of the lands embraced in said petition and order."

The order referred to was the order of notice of a hearing upon the petition (Rec. p. 30).

The order of the County Court of Poinsett County adding the lands in controversy to drainage district was rendered March 15, 1918, upon the petition of Roy Rice and others (Rec. pp. 35-36).

The first plans ever filed for any improvements upon the lands east of the St. Francis River and upon the lands in controversy were filed May 24, 1919 and the circumstances concerning the addition of said territory in controversy are fully set out in the order of the county court fixing a day for hearing upon the approval of plans and assessments shown on record pages 37-42, inclusive.

The judgment confirming the plans as to the lands in controversy and confirming and establishing the assessment of benefits and damages was rendered in the County Court of Poinsett County on June 23, 1919 and

at said hearing a very large number of landowners appeared (Rec. pp. 44-50). This order fully recites the facts concerning the addition of said lands to the district on March 15, 1918.

The plans first filed on January 17, 1918 and the assessment of benefits filed on January 22, 1918 did not affect the land in controversy nor any lands east of the St. Francis River, as shown by the above stipulation and certainly the bond issue dated January 1, 1918 to support which a levying order was rendered by the county court on July 12, 1918, does not affect the land in controversy and any inference from the manner of statement adopted by plaintiff in error to that effect would be entirely incorrect (Rec. pp. 92-95).

A reference to this levying order shows that the bond issue was for $1,400,000.00 dated January 1, 1918, was based upon an aggregate assessment of benefits of $3,314,805.67 (Rec. p. 93).

The first bond issue affecting the lands in controversy was supported by a levying order of September 1, 1919, the bonds being dated August 1, 1919 and in the amount of $2,200,000.00. The assessment of benefits after the addition of the territory in controversy, the 50,000 acres more or less, east of the St. Francis River, had been increased to $4,743,807.50 (Rec. p. 95).

We repeat that Roy Rice originally entered the land in 1913, remained in possession and procured final certificate of entry on February 14, 1919, and received his patent on June 3, 1919 (Rec. p. 69).

Hence we wish to correct the brief of plaintiff in error at the points mentioned, and any other points in

which the brief seems to imply that there was any plan or assessment of benefits or bond issue affecting the land in controversy prior to June 23, 1919, which was about four months after the final certificate of entry of the land in controversy and twenty days after the actual issuance of the patent to Rice. Therefore the land of Roy Rice, in controversy, had passed from the United States Government and into private ownership more than four months before the filing of plans and assessments of benefits for improvements that were later to be constructed affecting those lands.

Second: Although not more than 5000 acres of land are directly involved in this controversy (Rec. pp. 69-70) yet the decision in this case will affect several hundred thousand acres of land within the St. Francis and Little River basins comprising in fact that entire acreage which has been before the courts on numerous occasions under the guise of "Sunk Lands" of the St. Francis and Little River Basins, or "Unsurveyed Lands," which were meandered in the original government surveys and which were resurveyed by the government during the past twenty years.

No one can deny that the construction of the St. Francis levee along the west bank of the Mississippi River has created practically all the value that exists in these "Sunk Lands" by keeping back the flood waters of the Mississippi. The levee has made possible the construction of drainage ditches and levees in the basin and has made a garden spot out of these swamps.

The question involved is whether or not the present owners of these former "Sunk Lands" shall pay

any part of the assessment for the improvements which are creating the value of their lands, or whether these owners shall entirely escape taxation while their neighbors pay the whole cost of these improvements. In the drainage district case there is the additional question whether these owners can thus escape taxation and shift the burden to others even though they petitioned for the improvement and for the inclusion of their lands within the district and for the imposition of the tax. We believe the questions herein presented are entirely distinct upon the facts from those presented in the case of

> *Lee v. Osceola and Little River Road Imp. Dist. No. 1, Mississippi County*, 268 U. S. 643.

The St. Francis Levee District for many years has followed the practice of assessing lands for levee purposes after the date the final certificate of entry was issued by the government and this practice was never challenged until the decision in the Lee case was rendered. Within six months after the decision in the Lee case was rendered this and numerous other suits were filed attacking all levee and drainage assessments within the St. Francis and Little River basins.

As shown in our first division of this statement of facts, there were no plans filed affecting the lands in controversy until after February 14, 1919, the date final certificate of entry was issued to Roy Rice. The plans and the assessments of benefits were not filed until May 24, 1919 and the hearing and establishment of such plans and assessments by the judgment of the county

court was not had until June 23, 1919 (Rec. p. 44). At this time final certificate of entry and actual patent had issued to Roy Rice, the entryman, to whose title plaintiff in error has succeeded.

As to the drainage district, therefore, there was no assessment of the lands in controversy during any portion of the time that title to the land remained in the government.

As to the levee district, no assessment was attempted until after issuance of the final certificate of entry and in making the assessments the levee board followed the routine practice set out in

> Amendatory Act 272, Sec. 4, Vol. 2, Acts of Ark. 1917, p. 1448

Another striking fact entirely distinct from the Lee case was that Roy Rice, deceased, and a large number of other landowners, his neighbors, in the territory east of the St. Francis River petitioned for the inclusion of their lands within the boundaries of Drainage District No. 7 and even petitioned the drainage district board and the County Court of Poinsett County to assess those lands in proportion with the assessments against other lands of the district (Rec. pp. 28-30, 66-76).

Another unusual circumstance present in this controversy, but not in the case of *Lee v. Osceola Road District* above referred to is that long after the issuance of even the patent by the government to Roy Rice, in fact, three years later, on April 5, 1922, the plans of Drainage District 7 were changed in very material respects, affecting all of the territory of the district,

including the territory in controversy, and a complete revision of the assessment was presented in the County Court of Poinsett County (Rec. pp. 57-66, 77-90).

The reports of the board and its engineers and the judgment of the court rendered in that cause at a hearing wherein a very large number of landowners appeared, indicate that this reassessment upon the modified plans, constitutes substantially an independent and new assessment of benefits. In view of the fact that it was made practically three years after the patent issued, we contend that the drainage district assessment in the present case is clearly sustainable even if we disregard all occurrences previous to the 1922 reassessment.

This reassessment of benefits of June 1, 1922 was cured and confirmed, as were also the revised plans of the district, by Act 657 Special Acts of Arkansas of 1923 p. 1638, approved March 23, 1923, which was practically four years after the land in controversy had been patented by the government to Roy Rice. We copy this act in another place in this statement.

A further fact (which, so far as we can observe, is not mentioned in the brief of plaintiff in error) is that neither the work of the drainage district nor of the levee district was completed prior to the time the title passed from the United States, nor was such work completed at the time the lawsuit was tried in the lower court. In the drainage district there remains $136,888.00 of estimated cost of work still unfinished in the eastern part of the district and surrounding the land in controversy, while $32,888.00 worth of work re-

mained uncompleted at the date of trial in the Chancery Court, west of the St. Francis Lake and floodway (Rec. pp. 90-92).

As to the levee board, the plans are continually changing on account of the changing course of the Mississippi River, caving of banks, increased development of the territory, and increased flood height of the Mississippi River. Hence the levee district contends that it is not a completed improvement and, in the nature of things, can never be wholly completed on account of changing physical conditions.

The court will please observe further that on account of the addition of the territory east of the St. Francis River upon the petition of Roy Rice and other owners of land, the drainage district incurred an expense of $2,050,455.78 upon the work east of the St. Francis River which was not contemplated in the original act creating the district. That land was added to the district on March 15, 1918 and the expenditures did not begin until 1920, the last item in evidence being as late as 1925. (Rec. pp. 90-91).

As to both districts foreclosure decrees for delinquent assessments were regularly rendered by the Chancery Court of Poinsett County for the installments of the assessment due for five consecutive years, as to the drainage district being the installments from 1920 to 1924, inclusive, and as to the levee district the installments of 1921 to 1925, inclusive. (Rec. pp. 99-103, 119). No question is raised that these decrees followed the statute and constituted due process of law and under each of the decrees there was a sale by

the commissioner to the respective districts and a confirmation later by the court and a deed. These ten foreclosure suits, in which Roy Rice could have raised the issues he raises in the present suit, should constitute *res judicata* of the matter in the present suit and should bar the maintenance of this suit.

Both the drainage district and the levee district have issued large amounts of bonds, the levee district having issued $5,532,000.00 of bonds (Rec. p. 118) and the drainage district $5,373,500.00 of bonds (Rec. pp. 98-99). The first bond issue of the drainage district, dated January 1, 1918, the levying order for which was rendered July 12, 1918, was not based upon any assessment of the land in controversy. This fact appears from the dates given in a previous part of this statement of facts.

History of the St. Francis Levee District, as Concerns the Lands in Controversy.

The lands in controversy constitute a portion of the "Sunk Lands" of the St. Francis and Little River Basins which subsided during the New Madrid Earthquake of 1811. Until the building of the St. Francis Levee along the west bank of the Mississippi River practically all the lands in controversy were overflowed annually by the floodwaters of the Mississippi River. When the original government surveys were made, about the year 1840, large portions of the territory were meandered by the surveyors and shown on the plats as "Sunk Lands" or lakes and bayous. If the St. Francis levee had not been built doubtless these

lands would still be swamps and only a small portion of the basin would be subject to cultivation.

In the year 1893, by the act cited by plaintiff in error, the General Assembly of Arkansas created the defendant St. Francis Levee District, constituted it a body corporate, put directors in control, laid upon it the duty of constructing a levee on the west bank of the Mississippi River to keep the flood waters of the Mississippi out of the St. Francis Basin, provided for an assessment of the benefits estimated to accrue to the lands and gave the board the right to issue bonds and pledge the assessment of benefits to the payment of those bonds.

A review of the powers of this board is contained in the decision of the Supreme Court of Arkansas upholding the district.

Carson v. *St. Francis Levee Dist.*, 59 Ark. 513.

Work progressed rather slowly, the first plans for the improvements being filed in 1896. The levee first planned was to contain 8,660,377 cubic yards and to cost $1,299,697.00, the amount of tax being estimated at four cents per acre per year. This levee was intended to protect only against medium floods since "at that time the area of the levee district comprising approximately 1,600,000 acres was practially a swamp and largely undeveloped. Much of this land belonged to the state and was considered worthless" (Rec. p. 107).

On account of the increased flood heights of the Mississippi River, the development of the territory necessitating increased protection, the caving banks of the Mississippi River and changing channels thereof,

large number of entries in Township 12 North, Range 7 East were shown beginning with 1913 (Rec. pp. 69-70).

The government brought suit to establish and quiet its title to said lands and a large amount of other lands not in controversy, and on May 7, 1918 a decree was rendered establishing the title of the government and enjoining other claimants from "interfering directly or indirectly with the peaceable possession and enjoyment of said described lands, or any part thereof, by qualified entrymen, lawfully claiming or asserting rights thereto under the plaintiff, in compliance with the Federal statutes and rules and regulations of the General Land Office relating to homestead entries" (Rec. p. 104).

Hence we say that the very decree which quieted the title of the United States to these lands recognized that Roy Rice and other homesteaders were the legal parties in interest and protected their title.

History of the Drainage District as to the Lands in Controversy.

The drainage district was created by Acts 1913, Vol. 1, Act 186, p. 1064.

A board of directors was named, the power was given to build drainage ditches and levees, to plan improvements, and to assess benefits and damages as to all lands affected by the plans. Such assessment of benefits and damages required confirmation by judgment of the County Court of Bennett County and appeals were provided for, the district was given the power to issue bonds and to levy an annual tax based

upon the said assessment of benefits and to pledge its revenues for the payment of the bonds.

No part of the land in controversy was embraced within the original boundaries of the drainage district as contained in that act, nor were any of the lands in controversy affected by the plans nor assessments first filed by the district. (Stipulation, Rec. 27-28, and see corrections in first part of this statement.)

Section 16 of the act provided that additional territory outside of the boundaries of the district might be annexed to the district by order of the county court "when a majority in land value, acreage or number, shall have petitioned said court for such annexation." The petitioners were required to give notice of the filing of said petition and a hearing in county court was provided and in the event the court should annex the lands they were to be assessed and taxed by the district proportionately with the lands already included in the district.

At the same session which created Drainage District No. 7 of Poinsett County, a large companion district was created in Mississippi County in the same river basins just northeast of Poinsett County. This was Drainage District No. 17, of Mississippi County. The natural outlet for the waters of Drainage District No. 17 of Mississippi County was southwesterly down the Little River and St. Francis Basins into Poinsett County. However, the districts did not join and there was a gap between them containing approximately 40000 acres of land and including the territory in controversy and in fact all of Township 12 North, Range 7 East.

Just north of this "No Man's Land" of some 50,000 acres were other wet and low lands in Craighead County. Messrs. Satterfield and Finn, acting as attorneys for the landowners of this block of territory left between the upper Drainage District No. 17 of Mississippi County and the lower Drainage District No. 7 of Poinsett County, undertook to organize under the general drainage statute of Arkansas a separate district to drain the 50,000 acres of land together, possibly, with lands in Craighead County. Petition for such a district had actually been filed in court (Rec. p. 72). It appeared impossible to establish this middle district, however, because, in the first place, it was very low and wet and the cost of drainage would be high and, second, it would have no outlet without the consent of Drainage District No. 7 of Poinsett County. The court should bear in mind that Drainage District No. 17, of Mississippi County was planning to empty its waters upon this 50,000 acres and Drainage District No. 7, of Poinsett County expected only to protect its territory by constructing a levee along the west bank of the St. Francis River, which would leave this 50,000 acre block of land subjected to a flood from above and cut off in part by a levee below and, consequently, with an insufficient outlet.

In view of this dangerous situation, Messrs. Satterfield and Finn representing the landowners of the territory in controversy and other landowners, decided that the best thing for them to do was to annex their lands to Drainage District No. 7 of Poinsett County so that that district would embrace them in its protective plans.

The record reflects that the board of directors of Drainage District No. 7 were somewhat reluctant to undertake this additional burden. They feared in the first place that it would lead to litigation and thus delay their own plans; next, they feared that the expense would be vastly increased and, next, that delay would ensue which would injure the lands west of the St. Francis River which were the only lands protection for which was contemplated by their original plans. These facts are reflected in the stipulation, letters and minutes of the board referring to the proposal to add the territory in controversy to Drainage District No. 7, as shown in Record, pp. 70-77 and 66-68. The latter series of pages show the minutes of board meetings of Drainage District 7 at which the addition of said lands was consdered.

Finally the board agreed that if the landowners of the territory east of the St. Francis River in Poinsett County would prepare and file their petitions for the annexation of their lands and for the taxation of such lands, Drainage District No. 7 would not contest the annexation, provided, however, that the addition of said lands "would not delay the filing of the reports and plans nor any other proceedings, and would not increase the cost to property owners in the present bounds of Drainage District 7" (Rec. p. 67). The correspondence shows that an additional proviso was that the addition of the territory should not increase "the probability of a contest from landowners in the lower end of the district" (Rec. p. 72). The correspondence shows further that under the very terms of

the agreement, the board of directors of Drainage District No. 7 were to proceed forthwith to file their original plans and assessments so as to save delay and later revise them *if* and *when* these lands should be added (Rec. pp. 74-75).

It was this understanding and the fear of litigation by landowners in the original district that caused the district to file its original plans early in 1948 which had nothing to do with the lands in controversy although the manner of statement thereof in the brief of plaintiff in error might seem to imply that these plans and assessments concerned the added lands.

The form of petition for the annexation of these lands was actually sent by Mr. Satterfield to the attorneys for the drainage district before that petition was circulated for signature (Rec. p. 76). The stipulation recites and the order shows that this petition was circulated, presented to the court, notice given, and the hearing had at the instance of Messrs. Satterfield and Finn representing the landowners of the territory in controversy and other lands east of the St. Francis River, and the sole extent to which the drainage district participated in those proceedings was that its "attorney appeared in the county court and orally stated to the court that Drainage District No. 7 would not object to the addition of said territory if the taxpayers desired their lands added" (Rec. 76-77).

It is important to note at this point that this petition for the annexation of this territory went further in language than the law required, because it not only requested the board of directors of said district and the

county court to annex the lands of petitioners to the district, but also prayed that benefits and assessments be levied against said lands in accordance with their proportionate part of the cost of draining, protecting and reclaiming the same (Rec. p. 29). This petition was signed by Roy Rice, deceased, who is succeeded in title by the plaintiff in error.

The drainage district took no part in filing the petition nor otherwise, but it was filed by Messrs. Satterfield and Finn, as attorneys for the petitioners (Rec. p. 30) and on March 5, 1918, the petitioners, through their attorneys, presented the petition to the court and procured the order annexing said lands to the district. That order expressly provided that "there be levied against said territory and lands so annexed in accordance with the benefits which the same will respectively receive, such benefits and assessments as may be necessary to pay its proportionate cost of draining, reclaiming and protecting the same" (Rec. p. 30).

At the next session of the General Assembly the addition of said lands was confirmed and approved by Act 55, Spec. Acts 1919, p. 52.

This act was approved February 4, 1919, eleven days before Rice received his final certificate of entry but four months prior to the time when the first plans and assessment affecting the lands of Roy Rice in controversy were established, which was on June 23, 1919. This date was twenty days after the actual issuance of the patent to Roy Rice.

The first bond issue, dated January 1, 1918, had nothing whatever to do with the lands in controversy

and this is shown not only by the stipulation but by the recital of the estimated cost and benefits and by the entire record.

The first assessment of benefits upon the land in controversy, being the land added by order of the county court on March 15, 1918, was filed on May 24, 1919, notice was given and on June 23, 1919, the first assessment upon said lands in controversy was established by court order (Rec pp. 37-42).

The first issue of bonds based upon any assessment of the lands east of the St. Francis River was supported by levying order dated September 1, 1919 (Rec. p. 95). The first bond issue based upon any assessment upon the lands in controversy or any lands annexed to the district, were dated August 1, 1919 (Rec. p. 96).

As previously recited, the total bond issue gradually grew until it became $5,373,500.00 of which practically half was expended in improvements affecting lands east of the St. Francis River which were added upon the petition of Roy Rice and others on March 15, 1918.

No contract was let affecting the added territory east of the St. Francis River until August 20, 1919, and later several other contracts affecting the territory in controversy were let some being as late as 1924 (Rec. 90-92).

The improvements of the district have never been completed and on the day of trial there remained of estimated work to be done east of the St. Francis River affecting the land in territory $1,500,000.00 while $22,000.00

was estimated to remain unfinished west of the St. Francis River (Rec. pp. 91-92). Numerous court hearings were had and a large amount of work has proceeded and it is evident that Roy Rice must have known of the tremendous expenditures and operations of these dredge boats beginning as early as 1920. Very heavy expenditures in that territory are shown from the years 1920 to 1925. Yet no objection was made to the assessment nor to the annual tax until the present lawsuit was filed on December 12, 1925 (Rec. p. 9), following by some six months the decision of this Honorable Court in the case of *Lee v. Osceola Road District*, *supra*.

At the time of filing this lawsuit Roy Rice and his companions, many of whom have filed similar suits, had reaped practically all the advantages they would ever reap from the improvements of the district; they had acquired the outlet they sought, and the ditches and levees which they thought so necessary in 1918, when they petitioned to be taxed in the district. Reversing their attitude of acquiescence, suits were brought to cancel these assessments and similar suits were brought by owners of former government land all over Eastern Arkansas.

To revert a little in point of time we will refer now to the reassessment of benefits in 1922. This was not a reassessment such as was considered in the Lee case under the road improvement district law, which amounts only to an annual readjustment or equalization of an assessment.

The reassessment under the drainage law could only be had when the plans of the district had been

changed so as to render the former assessment inequitable. There was no provision of the drainage statute at that time for any annual readjustments or equalization of assessments but only for a reassessment of lands affected by an alteration of plans.

Act 193 Vol. 1 Acts 1917 p. 1060 Sec. 7.
Act 35 Spec. Acts 1919 p. 55 Sec. 3.
C. & M. Dig. Ark. Sec. 3625.

The report of the engineers and of the board filed in the County Court on April 5, 1922, recites at length the reason for the reassessment and for the change of plans and the allegation is made therein and is not contested anywhere in the record that these changes affect all the lands of the district, including the lands in controversy (Rec. p. 77-88). Upon the filing of said report and reassessment notice was published describing all of the lands of the district, and on May 31st and June 1st, 1922 the revised plans and the entire reassessment of benefits based thereon were established by judgment of the County Court (Rec. p. 59-66). There was a hearing in County Court and the record shows more than a page of printed names of persons who appeared at the hearing, but it is not shown that any one appealed from the court's findings. The list includes many of the persons affected by this very decision but does not include Roy Rice (Rec. pp. 61-62).

We contend that this reassessment upon the complete alteration of plans marks a new period equivalent in substance to a new and independent assessment of benefits as of the date June 1, 1922. This date

follows by three years or more the final certificate of entry and the patent issued to Rice for the lands in controversy.

The General Assembly of Arkansas by Act 657 p. 1638 Special Acts of Ark. 1923 passed a complete curative act covering the plans and reassessment of June 1, 1922 which we here copy in full as follows:

> "Section 1. That the reassessment of benefits and damages in Drainage District Number Seven of Poinsett County, Arkansas, as confirmed and established by the Judgment of the County Court of said County on June 1, 1922, and as set out and filed in the assessment book theretofore filed by the Board of Directors in 1922 are found to be just and equitable, and it is found that the improvements planned in said district will result in benefits to the property to the extent established by said County Court on June 1st, 1922, and the assessment roll fixed by the County Court on said day is hereby cured, established and confirmed, until a reassessment be had as provided in the statutes now in force concerning said district, and all defects in said assessment of benefits or of damages are hereby cured, and confirmed and the same is declared valid and effectual; and further that the revised plans of said drainage district heretofore filed be and the same are confirmed.
>
> "Section 2. This Act shall supplement existing acts, and shall not in any wise repeal or affect any portion of any other act affecting said district, all of which shall remain wholly in force.
>
> "Section 3. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage."

Roy Rice defaulted in paying his drainage assessment as early as 1920, the first year after he received his patent. A due and legal foreclosure decree was rendered therefor, sale was had and a deed made to the district and no question is raised as to the regularity of the proceeding (Rec. 99-102).

Similar decrees for the installments due in 1921, 1922, 1923 and 1924 were had in the Chancery Court of Poinsett County, sales were made and deeds executed to the district just as in the first case (Rec. p. 101-103).

In like manner and by proceedings practically identical in the Poinsett Chancery Court the levee board procured foreclosure decrees for the installments due in the years 1921, 1922, 1923, 1924 and 1925 (Rec. p. 119).

These foreclosure decrees are pleaded as *res judicata* by both districts, since the attack herein made upon the assessment could have been presented as a defense in said cases.

Upon these facts it appears to us, as it did to the Supreme Court of Arkansas, that this case is entirely distinct from the case of *Lee v. Osceola Road District*, *supra*.

ARGUMENT.

POINT A.

This case is entirely distinct in facts and law from the case of Lee v. Osceola and Little River Road District, supra.

Neither this suit nor any of the other numerous suits of similar nature now pending in Eastern Arkansas would have been brought except for the decision of this Honorable Court in the case of *Lee v. Osceola Road District*. A large number of such cases, including the present, were brought against various drainage districts and against the levee district, within about six months after the publication of the opinion in that case.

It seems manifest, therefore, that the case of plaintiff in error is based entirely upon the Lee case and if we can show that this case is entirely distinct from the Lee case in fact and law, then the entire argument of plaintiff in error falls.

Of course this Honorable Court knows better what it meant by its opinion in that case than counsel can possibly know, but as we understand that decision, it simply holds that lands which were formerly government lands cannot be taxed in the hands of a subsequent owner for improvements which were wholly completed while the title was in the United States.

We do not understand the Lee case as erecting a

barrier against the assessment of lands in the hands of private owners for improvements that were made after the government has parted with its title, nor for improvements that were not completed during the time the government still retains ownership. Our interpretation of that case is that it applies to prevent only a retroactive assessment for improvement taxes for work done during the time the land was the property of the United States and before it passed into private ownership.

This is the interpretation placed upon the decision by the Supreme Court of Arkansas in the case sought to be reviewed.

Drainage District 7 Poinsett County v. Exchange Trust Company, 175 Ark. 934.

Furthermore, as we interpret the Lee case it would not prevent the entryman who subsequently obtains the government's title, from expressly waiving his claim to immunity from such taxation, and certainly it would not prevent the government from waiving its immunity by proper Act of Congress, such as was construed in

Perry v. Drainage Dist. 17 Mississippi County, 155 Ark. 89; 295 U. S. 568.

The Lee case quotes and relies upon the decision in *Nevada National Bank v. Provo Irrigation Dist.* 140 Cal. 344.

That decision seems to emphasize the fact that neither the government nor the entryman had consented to the irrigation assessment considered.

In the present case we concede that the government has not consented to any assessment, but we say that

Roy Rice, the entryman, expressly consented by petitioning for the annexation of his lands to this drainage district and for the imposition of the very tax which he seeks to escape in this suit. We contend that he thus waived, as to the drainage district, any claim of immunity that might seem to arise under the language of the Lee case.

A further ground of distinction between the present case and the Lee case is that no plans were filed, no money spent, and no assessment of benefits made as to the lands in controversy until June 23, 1919 which was after not only the final certificate of entry, but twenty days after the actual issuance of the patent to Roy Rice (Rec. 37, 44-50, 69).

In the Lee case it is true there was a reassessment, but, as pointed out in the statement of facts previously, this reassessment was a mere annual readjustment or equalization of the assessments in the road district, such as is provided for in the road district laws but not in the drainage district laws. As to the drainage district, the original assessment was not established on these lands until after the patent was issued and later a reassessment upon a complete change of plans was established in 1922 and confirmed by special act in 1923. No such facts appeared in the Lee case.

In the Lee case the opinion expressly states that the work had been completed before Lee received his final certificate and the reassessment attempted was an attempt to establish a retroactive tax upon the lands of Lee for work that had already been done before he received the title from the government.

The assessment in the Lee case was for a completed improvement while in the present case the drainage assessment was for an improvement for which no contracts were let prior to 1919 nor prior to the patent of this land to Roy Rice.

As to the St. Francis Levee District, it made no attempt to assess the lands until the year following the issuance of the final certificate of entry to Roy Rice. Since its improvements are constantly changing it is difficult to fix a date as to when any particular assessment in the levee district applies to any particular improvement. The levee is a unit and its purpose is to protect all the lands of the district from overflow. Hence the basis of assessment of benefits for the levee is much more general and much less complicated than as to a drainage district. The drainage district built both levees and ditches and each tract of land must be assessed with reference to the benefits to the particular district. A levee protects all land in a more or less equal manner and it is logical that its costs be extended equally over the acreage.

As stated above the drainage district completely reassessed upon an alteration of plans all the lands of the district in 1922 and this assessment was confirmed by a curative act in 1923. These later developments constitute an entirely different case from the facts of the Lee case.

An additional distinction between the present case and the Lee case is that Roy Rice, in the present case, became a petitioner, and through his attorneys actively participated in annexing his lands to the drainage dis-

trict and in procuring the assessment thereon for drainage purposes. In now attacking this assessment we contend that the plaintiff in error should be estopped by having assumed inconsistent judicial positions.

As a further ground of distinction we contend that in the present case, and not in the Lee case, regular suits for foreclosure of delinquent assessments were brought by both the levee board and the drainage district and regular decrees were rendered for five successive years in each district (Rec. pp. 99-103, 119).

The very attack now made upon these assessments could have been set up as a defense in any one of those ten foreclosure suits. That is, in fact, the manner in which the Lee case came before this court. But Roy Rice wholly failed to appear or to make any defense and we contend that these ten foreclosure proceedings in the chancery court constitute *res judicata* as to the right of plaintiff in error, who succeeds to the title of Roy Rice, to contest the assessment either by the levee district or by the drainage district. No such facts existed in the Lee case because as soon as he was sued for foreclosure of the assessment Lee appeared, contested the case and later brought the matter to this court for review.

Other points of distinction between the present case and the Lee case are set out under the head of estoppel in the opinion of the Supreme Court of Arkansas sought to be reviewed. Not only did Roy Rice petition to join the district and to be taxed, but after thus inviting the expenditure he stood by for practically six years after receiving his patent and watched

the district expend more than two million dollars and issue a large amount of bonds for the drainage and reclamation of his lands and those of his neighbors east of the St. Francis River, and he did not object until the improvements were substantially completed nor, in fact until about six months after this court had rendered the decision in the Lee case.

For these reasons we contend that the Supreme Court of Arkansas was correct in holding that the Lee case does not apply to prevent the levy of the assessments complained of in this suit.

POINT B

The decision in the case of Lee v. Osceola Road District, supra, merely holds that lands formerly government lands cannot be assessed after passing into private ownership for improvements wholly completed during the period that the title remained in the government. In the present case neither the drainage district nor the levee district improvements were completed when the government parted with its title, nor in fact are they complete up to the present time.

In Point A we argued that the Lee case applies only to prevent an assessment to pay for an improvement wholly completed while the title remains in the United States. Under this head we will briefly review the facts showing that neither the improvements of the drainage district nor of the levee district were completed on February 14, 1919, the date final certificate of entry issued from the government to Rice, the date when the lands became taxable according to the concession of plaintiff in error.

We will further show that none of the improvements of the drainage district were made until long after that date.

As to the drainage district: Not only were the drainage district's plans not completed on February 14, 1919, the date final certificate was issued, but in fact no plans of the drainage district had even been filed affecting the lands in controversy on that date, nor were any such plans filed until May 24, 1919 more than a year after the lands were annexed to the district. No assessment of benefits was established by the county court as to these lands until June 23, 1919, twenty days after the date of patent, and four months after the certificate of entry (Rec. p. 44).

No contracts were let for any work east of the St. Francis River nor any work affecting the lands in controversy until after the establishment of the benefits not until August 20, 1919 (Rec. p. 90). Later contracts were let through 1920, and in 1923 and in 1924 affecting improvements east of the St. Francis River and affecting the lands in controversy (Rec. p. 91).

The record shows that $2,050,455.78 was expended east of the St. Francis River beginning with the year 1920 and up to 1925. We here copy for the court from Record p. 91 the list of expenditures during each year, east of the St. Francis River:

1920	$ 23,999.68
1921	237,278.49
1922	443,446.17
1923	555,055.89
1924	717,741.60
1925	72,933.95
	$2,050,455.78

It is evident that the expense largely overran the estimate of cost and a very large percentage of this excess expenditure is due to work east of the St. Francis River in the land added on petition of the land owners on March 15, 1918.

At the time of trial there remained $120,000.00 worth of work estimated as uncompleted east of the St. Francis River (Rec. p. 92).

Hence it is manifest that not only was the work of the district not complete on February 14, 1919, the date of final certificate of entry, but in fact no work at all was even commenced until about a year thereafter, and in 1920.

As to the Levee District

The testimony of its engineer shows that there is a continual expenditure for the maintenance of the levee, to construct loops, for emergency work, and for the general strengthening of the levees. His report shows that the levee now contains six times more dirt than was contemplated in 1896, and that the annual revenue is practically six times what it was in 1896.

On account of the changing flood heights, the increased drainage of lands above in the Mississippi Basin and the increased development of the territory necessitating more complete protection, the plans of the levee district are in a constant condition of modification, particularly following any great flood. Hence, we contend that a levee along the Mississippi River can never be considered as a completed improvement, but that it constantly must be changed, strengthened, guard-

ed and maintained, and that such maintenance is as much a part of a levee improvement as the original construction of the dirt embankment under the first plans.

The levee planned in 1896 to protect the basin of the St. Francis and Little River, as it then existed, and with its population and resources as of that date, and with the flood height of the Mississippi River as of that date would be wholly ineffective and absurd as compared with the present situation in the district (Rec. pp. 105-118). For instance, the greatest flood height attained in the Mississippi River at Cairo previous to 1893 (the year the levee district was organized) was 52.17 feet during the year 1883. But in 1913 the river reached a flood height at Cairo of 54.69 feet. This is an increase in flood height at Cairo of 2.52 feet. At Memphis, however, nearer the territory in controversy, the previous maximum flood height was 35.6 feet in 1890, but in 1913 the river reached a height of 46.55 feet, this constituting an increase in flood height at Memphis of 10.95 feet (Rec. p. 109).

We therefore contend that neither the drainage district nor the levee district was a completed improvement at any time while the lands in controversy were the property of the United States, and further contend that the assessments levied do not cover work completed while the title of the lands remained in the United States.

POINT C.

Roy Rice, the entryman under whom plaintiff in error claims title, not only signed a petition that the land in controversy should be annexed to the drainage district, but participated through his attorneys actively in court proceedings perfecting such annexation and actually petitioned in so many words that the assessment now attacked be levied against his lands. Hence he waived any possible immunity that might have been claimed because the lands were formerly government lands.

The line of distinction between waiver and estoppel is rather indefinite, but generally speaking a waiver is the intentional relinquishment of a known right. It is a voluntary act and implies an election by the party to dispense with something of value or to forego some advantage which he might at his option have demanded and insisted on. Waiver is applicable to practically all rights or privileges to which a person is legally entitled, whether secured by contract, conferred by a statute or guaranteed by the constitution, provided such right rests in the individual for his sole benefit.

27 R. C. L. pp. 804 806.

The United States Circuit Court of Appeals for the Eighth Circuit passing on the Colorado Irrigation Statutes, held that a homestead entryman prior to receiving his patent might waive his right to be excluded from an irrigation district on the ground that the land was not in a physical condition to be irrigated, where, instead of objecting to the inclusion of his lands within the district, he actually petitioned for inclusion

as soon as he should acquire a freehold title. A number of cases are cited therein as supporting the conclusion.

Nile Irrigation Co. v. *Gas Securities Co.*, 248 Fed. 861.

This is the only case we have found directly holding that an entryman, prior to the issuance of the patent, may waive any immunity by signing a petition for improvements. However, later under this point, we present authorities showing that an entryman has an inceptive title sufficient to support similar waivers.

> "Active participation or encouragement in causing an improvement to be made will estop the owner engaged therein from denying the validity of the proceedings and the assessment made in pursuance thereto. This rule is well established and is founded upon principles of justice."

It does not apply where the assessment is absolutely void.

> 25 R. C. L. pp. 178, 181.
> *English* v. *Arizona*, 214 U. S. 359.
> *Chadwick* v. *Kelly*, 187 U. S. 540, 546.
> *Shepard* v. *Barron*, 194 U. S. 553.

From the latter case we quote the opinion of the court beginning on page 567 as follows:

> "Under some circumstances a party who is illegally assessed may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. Such a case would exist if one should ask for and encourage the levy of the tax of which he subsequently complains, and some of the cases go so

far in that direction as to hold that a mere failure to give notice of objections to one who, with the knowledge of the person taxed, as contractor or otherwise, is expending money in reliance upon payment from the taxes, may have the same effect. Cooley, Taxn. p. 573 and cases cited in note 5; *Tash* v. *Adams*, 10 Cush. 252; *Bidwell* v. *Pittsburgh*, 85 Pa. 412, 27 Am. Rep. 662; *Shattc* v. *Thompson*, 15 Wall. 151, 21 L. Ed. 123."

"Provisions of a constitutional nature, intended for the protection of the property owner, may be waived by him, not only by an instrument in writing, upon a good consideration, signed by him, but also by a course of conduct which shows an intention to waive such provision, and where it would be unjust to others to permit it to be set up. Certainly when action of this nature has been induced at the request, and upon the instigation of an individual, he ought not to be thereafter permitted, upon general principles of justice and equity, to claim that the action which he has himself instigated and asked for, and which has been taken upon the faith of his request, should be held invalid, and the expense thereof, which he ought to pay, transferred to a third person."

See also:

New Orleans v. *Warner*, 175 U. S. 120.
Wright v. *Davidson*, 181 U. S. 371.

In 9 A. L. R. there is an elaborate annotation following the seven cases beginning with

Moore v. *City of Yonkers*, 225 Fed. 485;
9 A. L. R. 500.

This annotation covers the field of "Loss of Right to Contest Assessment in Proceeding for Street or Sewer Improvement by Waiver, Estoppel, or the Like." The question of estoppel by petitioning for improve-

ment is annotated beginning page 649 and by acquiescence or accepting of benefits beginning at page 757.

Immediately following that annotation there is reported in 9 A. L. R. p. 835 the case of

People of Illinois v. *Letempt*, 272 Ill. 586.

This case discusses estoppel by signing the petition for the assessment and the bonds.

Just following this case, as reported in 9 A. L. R. is the case of

Geib v. *County of Morrison*, 119 Minn. 261, 9 L. R. 839

which covers estoppel by acquiescence and consent to the construction of drains.

To these two cases is appended an annotation on the immediate question in controversy in the present case, "Loss of Right to Contest Assessment in Drainage Proceeding by Waiver, Estoppel, or the Like." This annotation begins on page 842 and the question of estoppel by petitioning for or promoting this improvement is discussed beginning with page 844, 847 and estoppel by acquiescence or acceptance of benefits is discussed in the note beginning with page 888.

It seems that all the cases are collected in these annotations and the rule is well established by the weight of authority that active participation by signing the petition and promoting the improvements, as well as by acquiescence and acceptance of benefits, will estop a landowner from contesting an assessment that is not absolutely arbitrary or entirely void for jurisdictional defects.

In the case sought to be reviewed here, the Supreme Court of Arkansas has directly held that Roy Rice waived his claims and is estopped by his conduct.

Plaintiff in error seems to argue that the Supreme Court of Arkansas held that all of the elements of estoppel refer to conduct of Rice *prior* to the issuance of final certificate of entry to him by the government. As a matter of fact, in the opinion of the Supreme Court of Arkansas, beginning on page 929 of 175 Ark. the court said:

> "But it is claimed that after appellee became the beneficial owner of the land, he was guilty of such acts and conduct as would estop him from attacking the validity of the annexation proceedings and the subsequent assessment of his lands thereunder. It is true that appellee and others filed a petition in 1918 for the annexation of their lands to the drainage district, but the change of plans was not made and the assessment of benefits was not made until June 1919, at which time appellee and the other landowners who petitioned for the annexation had received final certificates of entry from the United States."

On page 940 the court said:

> "Pursuant to the annexation petition, the land of appellee and the land of others, comprising at least 3,280 acres, were annexed to the original drainage district and brought under the operation of the act creating it. The landowners voluntarily asked for the privilege of becoming subject to all its provisions. In effect they asked for the assessment of benefits on their land and that they should become subject to the provisions of the act just as the land contained in the original district. The commissioners of the drainage district assented to their request, and the county court acted upon it and changed the formation of the district and the improvements to be made thereunder in a substantial way. In the very nature of things the added district imposed a very

much larger expense upon the property owners of the whole district in order to afford protection to the lands of appellee and others who desired to be brought under the provisions of the act creating the drainage district and to participate in the benefits to be derived therefrom.

"It was necessary to issue a very much larger bonded indebtedness in order to accomplish this purpose. The property owners in the original district assumed the larger additional indebtedness, relying upon the acts and conduct of the petitioners. By petitioning for the annexation of their lands to the district, appellee and others declared that they would submit themselves to all the responsibilities and burdens imposed by the original act. They purposely caused the authorities to believe this as a matter of fact. Relying upon their acts and conduct, the commissioners largely increased the bond issue and expended money in the construction of the improvements in the amended district so as to reclaim and protect the lands of appellee and the other petitioners for the annexation from the floods. They permitted their lands to be assessed in June, 1919, after they had become the beneficial owners of them. In 1922 the commissioners, under the belief that the old assessments had become unequal, made a complete reassessment of the benefits against all the lands of the district, including those who had petitioned for the assessment. They proceeded with the work under the amended plans, and appellee and other landowners similarly situated enjoyed the benefits. To now permit them to deny the assurance given by their own acts and conduct, which was continued during the progress of the work, would work a fraud upon the drainage district and the landowners situated within its original boundaries, and this cannot receive the sanction of law. The drainage district and the commissioners thereof had no reason to believe that the petitioners for the annexation would

allege any invalidity in the law which they were asking to have extended for the protection of their land. The drainage district and all interested under the original act have been misled by the affirmative acts and conduct of appellees and others petitioning for the annexation of their lands to the district.

"Hence we are of the opinion that appellee and those similarly situated are estopped from attacking the validity of the annexation proceedings and the assessment of benefits against their land authorized for the construction of the drainage district and levees contemplated under the act. Having expressly consented to the taxation of their land after they had become the beneficial owners thereof, and the drainage district having acted thereon and made large expenditures in reliance upon their consent, such consent cannot be withdrawn."

In addition to that decision by the Supreme Court of Arkansas there are a number of other cases holding that a landowner may be estopped to contest an assessment by taking part in the creation of a district and inviting expenditures.

Fitzgerald v. *Walker*, 55 Ark. 148
Rector v. *Board*, 50 Ark. 116
Harnwell v. *White*, 115 Ark. 88
Meyer v. *Board*, 148 Ark. 622

Roy Rice, the homestead entryman, had sufficient interest in the land in controversy to justify his signature to the petition and upon which to base our contention that he waived any claim of immunity against the assessment in this case.

Rice had entered this land in 1917 and he remained in possession and finally received his final certificate

on February 14, 1919 and his final patent on June 3, 1919. Plaintiff in error concedes that the land became taxable and subject to special assessments after February 14, 1919 the date final certificate was issued. This is the holding of this court in a number of cases, including

Wisconsin Central R. R. Co. v. Price County
133 U. S. 496.

The case just cited expressly places taxation for state purposes on the identical basis with local and special assessments under state authority and says that neither can be supported while the government holds the title. But it holds that when the government has parted with the title by the issuance of final certificate, then the purchaser "will be treated as the beneficial owner of the land and the same be held subject to taxation as his property. This exception to the general doctrine is founded upon the principle that he who has the right to property and is not excluded from its enjoyment shall not be permitted to use the legal title of the government to avoid his just share of state taxation."

But it is not only upon the issuance of the final certificate that the entryman under the homestead laws becomes entitled to certain rights, but upon the entry "he has a substantial inceptive title sufficient as against third parties to support suits in equity or at law, although he may not yet have taken actual possession of the land." Hence a patentee under the homestead laws may under the doctrine of relation maintain an action to recover damages for timber cut from his land

by a trespasser after the homesteader had made his entry but before he had taken actual possession.

Knapp v. *Alexander Lbr Co*, 237 U. S. 162.

This case cites

United States v. *Buchanan*, 232 U. S. 72.

Gauthier v. *Morrison*, 232 U. S. 452.

See also

Witherspoon v. *Duncan* (71 U. S. 210), 4 Wall. 210.

Doran v. *Kennedy*, 237 U. S. 362.

The Supreme Court of Arkansas passed upon the right of a homesteader in Drainage District 17 Mississippi County, the companion district to Drainage District 7 Poinsett County, involved in this suit. The court held that from the date of making formal entry of his claim a homesteader upon such lands has such a vested right of property therein as will permit him before the issuance of a patent to recover damages for an injury to the land and hence is entitled to damages from a drainage district for right of way for its ditches.

Schmidt v. *D. D.* 17, 140 Ark. 541.

Homestead lands are exempted from liability for debts contracted prior to the issuing of patent, but this exemption "is designed merely to protect the settler from a forced sale on a debt contracted prior to the time designated (the time when patent should issue) and does not preclude him from borrowing money and voluntarily creating a lien on the land by way of mortgage to secure the same, or prevent the enforcement of such mortgage."

32 Cyc. p. 1084.

22 R. C. L. p. 325 Sec. 74.

The whole question of the right to mortgage homestead lands prior to the issuance of final certificate or patent has been considered in a late case and exhaustively annotated.

Bashore v. Adolf (Id.), 238 Pac. 534, 41 A. L. R. 932.

It is there set out that an entryman who attempts to mortgage his land prior to receiving his final certificate or patent is estopped as against the mortgage from denying the validity of the lien, regardless of the provision exempting homesteads from debt.

41 A. L. R. p. 949, 951.
Stark v. Morgan, 73 Ks. 453, 6 L. R. A. N. S. p. 934 and note.

In this very record the rights of the homestead entryman are protected and acknowledged in the decree rendered in the United States District Court in the Blumenthal (or Bluthenthal) case which enjoins the defendants from interfering with the possession of entrymen who occupy pursuant to the homestead laws (Rec. p. 104).

From these authorities and others that might be cited, and particularly from the case of

Nile v. Irrigation District, supra

we believe it clearly established that the homestead entryman may waive the immunity of his lands from special assessment and may voluntarily assume the lien for such special assessments by signing a petition for inclusion of his lands within the district and by participating in the proceedings. Certainly he ought

to have the power to ratify, after acquiring the final certificate, his previous signature to the petition and to estop himself by subsequent activity in the proceedings as well as by acquiescence.

The court will note that certainly the drainage tax would not hinder the government in disposing of these lands, because the entrymen themselves petitioned for the tax and, except for the drainage improvements paid for by the tax, the land admittedly would be completely ruined by flood waters.

The recital of facts shows that this particular land, except for the outlet afforded by Drainage District 7, would be ruined by the floodwaters of Drainage District No. 17, Mississippi County. This was the reason for the urgent desire of the landowners to be added to Drainage District No. 7. Whatever value the lands have for farming purposes is contributed by the improvement districts, defendants in error in this case. Except for these improvements, therefore, the government could not have disposed of these lands because they would have been so wet as to be incapable of cultivation.

We contend, therefore, that Roy Rice expressly waived any immunity he might have claimed under the doctrine of the Lee case.

POINT D.

No plans were filed by the drainage district affecting the lands in controversy while the title remained in the government, nor until after Roy Rice received his final certificate of entry. No assessment of benefits nor levy of tax nor issue of bonds were made by the drainage district affecting the land in controversy until after such final certificate of entry was issued by the government to Roy Rice.

The levee board did not assess the lands in controversy until after the issuance of final certificate of entry to Roy Rice.

We have already sufficiently recited the facts vindicating this allegation. These facts are set out in the opinion of the Supreme Court of the State of Arkansas heretofore quoted. They are further carried in the stipulation of counsel in the record in a most explicit manner (Rec. 27-28) heretofore copied.

We will not elaborate upon this question of fact any further, except that we will here tabulate, for the convenience of the court the comparative dates from the record affecting the lands in controversy:

July 2, 1913—Certificate of entry to Roy Rice.

February 14, 1919—Final certificate was issued.

June 3, 1919—Patent issued (Rec. p. 69).

January 25, 1918—Petition filed by Rice that his land be annexed to the district (Rec. p. 30).

March 15, 1918—Lands annexed by county court order (Rec. p. 35).

May 24, 1919—Plans filed for improvements east of St. Francis River (Rec. p. 37).

May 24, 1919—First assessment filed affecting lands in controversy (Rec. p. 37).

June 23, 1919—Plans and assessments approved as to lands in controversy (Rec. p. 44).

August 1, 1919—First bond issue affecting said lands (Rec. p. 96).

Sept. 1, 1919—Entry of levying order supporting said bonds (Rec. p. 95).

August 20, 1919—First contracts let affecting the lands in controversy (Rec. p. 90).

In Year 1920—First money expended east of St. Francis River (Rec. p. 91).

1920—First foreclosure decree for drainage taxes on said lands was for the 1920 installment (Rec. p. 99).

February 16, 1923—Entry of first foreclosure decree for levee tax, for 1921 installment (Rec. p. 119).

February 5, 1919—First curative Act of Legislature confirming addition of said lands and assessments thereon.

April 5, 1922—Plans altering original plans filed (Rec. p. 57).

April 5, 1922—Complete reassessment of benefits filed covering such change of plans (Rec. p. 57).

May 31 and June 1, 1922—Judgment of county court confirming altered plans and reassessment rendered (Rec. pp. 59, 63).

March 23, 1923—Curative Act approved, confirming such change of plans and reassessment.

June 8, 1925—Date of decision of this court in Lee case.

December 12, 1925—Complaint in this case filed.

Hence nothing was done as to the drainage district as to these lands until after the final certificate of entry was issued.

As to the levee board, absolutely no attempt was made to assess these lands until the final certificate was entered. The practice of the levee board has been for years to assess lands after the issuance of final certificate of entry.

POINT E.

As to the drainage district the plans were completely modified and a complete reassessment of the benefits to all the lands of the district was established by order of the County Court on June 1, 1922, practically three years after the government had entirely parted with its title both legal and equitable. This was not such an annual readjustment and equalization of assessments as is permitted by the highway acts, nor such as is discussed in the case of Lee vs. Osceola Road District, supra, but is a reassessment based upon the altered plans only. The altered plans rendered the former assessment inequitable and all the lands of the district were reassessed. This marks a new, complete and independent assessment based upon plans adopted three years after the government parted with its title and hence the lands in controversy became subject to the reassessment, whether the previous assessment was valid or not.

Under the road law, considered in the Lee case, there was authority for an annual readjustment of the assessment, or so-called annual reassessment. In the Lee case the improvements had been finished before

this reassessment was made and the reassessment was made after the entryman received his final certificate, but was retroactive and covered improvements completed before he received his final certificate. The court in the Lee case held that such a reassessment would not be sustained.

Under the drainage statutes, however, there was no power for an annual reassessment or adjustment, but the law only provided that if the district found it necessary to alter its plans it might reassess the land the assessment of which was rendered inequitable by such change of plans. Under the Act of 1919 confirming the addition of this territory in controversy to the district, Act 35 Special Acts of 1919, p. 52, express power to alter the plans of the district and to reassess the benefits and damages upon such change of plans was given in Section 4.

In the same act, and in Section 3, all of the powers possessed by any drainage district organized under the general act were conferred also upon this district.

The general act concerning drainage districts affecting change of plans and reassessment is contained in C. & M. Digest of Ark., Sec. 3625.

The district has no other power to make a reassessment and, as will be noted, this is in fact a new or additional assessment and not a mere readjustment or equalization of the existing assessment.

The report of the board of the drainage district and the elaborate hearing had upon the plans showed that there were very substantial changes in the entire

plans of the district. Not only was the floodway changed, but also a lock and dam across the channel of the St. Francis River was necessitated and this lock and dam affects directly all of the territory in controversy and in fact all of the territory east of the St. Francis River. The reassessment was filed, notice was given and a hearing was had on June 1, 1922, at which a very large number of landowners appeared to contest, but finally they accepted the reassessment which raised the original assessment of benefits a certain percentage on all the lands of the district (Rec. p. 65).

The judgment of the county court was accordingly rendered sustaining and establishing the reassessment.

We do not contend that this reassessment and this complete change of plans worked any change in the entity of the drainage district. We concede that any improvement district must be formed for a specific purpose and that the entire purpose cannot be changed and preserve the entity of the district. However, our contention is that this reassessment, based upon a complete change of plans and affecting all of the lands of the district, does in fact start a new and independent period at which Roy Rice should have made his contest of this assessment and since it was three years after the title had passed from the United States Government the reassessment concerned Roy Rice only and did not concern the question of immunity of the Government lands from taxation. Roy Rice at the time this reassessment was made, had possessed the absolute title to the land for three years and he could not go back

and hide behind the skirts of the Government to avoid paying his just share of this reassessment.

Wisconsin Central R. R. v. Price County, supra.

From the list of expenditures made by the district in the territory in controversy during the years of 1922 to 1925, inclusive, it will be observed that very much the larger part of the two million dollars expended in the eastern part of Drainage District 7, including the annexed lands in controversy, was spent during and after 1922. More than a half million dollars was spent in 1923 and more than seven hundred thousand dollars in 1924. Large bond issues were made based upon this reassessment and forming the source from which the district secured funds for the work. Reassessments of this nature have been considered by the Supreme Court of Arkansas in numerous cases, particularly in the case wherein a review was sought before this court, and affecting the sister district, No. 17, of Mississippi County.

Pierce v. D. D. 17 Miss. County, supra.

The same statute affecting Drainage District 17, of Mississippi County and providing for addition of lands and reassessment of benefits was considered by the Circuit Court of Appeals for the Eighth Circuit in *Caldwell v. Guardian Trust Co.*, 26 Fed. 2nd Ser. 218.

As to Drainage District No. 17, the same statute was before the Supreme Court of Arkansas again in the case of

Chicago Mill & Lbr. Co. v. D. D. 17, 172 Ark. 1059.

A similar but less comprehensive proceeding for reassessment was upheld by this Honorable Court in *St. Louis, etc., Co. v. Kansas City*, 241 U. S. 419.

We say, therefore, that this reassessment of benefits in 1922 at the hearing for which numerous parties appeared and of which Roy Rice had notice and could have appeared, constitutes a new and independent assessment following by three years the time the government parted with its title, and marking a new period barring attack on the reassessment even if the original assessment in 1919 had been subject to attack by Roy Rice.

POINT F.

By Act of the General Assembly of Arkansas in 1923 the alteration of plans and the reassessment of benefits established in the County Court on June 1, 1922, referred to in the last preceding division of this brief, were cured and confirmed. This curative Act is a bar to the present attack upon the drainage district reassessment.

This Act is quoted in the statement of facts in this brief.

The decisions are innumerable in Arkansas as to the effect of curative Acts, and, likewise, there are a large number of such decisions in the Supreme Court of the United States.

The general rule is that a legislature may assess land for special improvements directly or it may dele-

gate such power to some board of directors or other tribunal. That whatever it originally possessed the power to do, it can subsequently approve and confirm by curative Act, and for this reason can cure the proceedings of a drainage district and its assessments at a later date, even if they are wholly irregular when originally established.

Some of the decisions of this Honorable Court upholding curative Acts are

Read v. *City of Plattsmouth*, 107 U. S. 568.
First National Bank v. *County of Yankton*, 101 U. S. 129.
Utter v. *Franklin*, 172 U. S. 416.
Town of Thompson v. *Perrine*, 103 U. S. 806.

Some of the cases in the Supreme Court of Arkansas concerning curative Acts, are:

Road Imp. Dist v. *St. L. S. F. R. R. Co.*, 164 Ark. 442.
Pierce v. *D. D. 17 Miss. County, supra.*
Green v. *Abraham*, 43 Ark. 420.
VanHook v. *McNeal Monument Co.*, 107 Ark. 292.
Faser v. *Wayne*, 134 Ark. 30.
Timms v. *Mack*, 147 Ark. 112.
Green v. *Williams*, 169 Ark. 1198.
Chicago M. & L. Co. v. *D. D. 17 Miss. Co.*, 172 Ark. 1059.

We could multiply these citations indefinitely as to the effect of curative Acts. It seems to us that the passage of this curative Act by the General Assembly in 1923, four years after the government parted with its title, constitutes a bar to the maintenance of this action by Roy Rice or his successor.

POINT G.

Beginning with the installment of assessment due the drainage district in 1920 and with the installment due the levee district in 1921, foreclosure suits for delinquent assessments and reassessments were regularly brought covering the years 1920-1924 inclusive in the drainage district and 1921-1925 inclusive in the levee district, and in each case due service was had pursuant to the law, and Roy Rice could have presented as a defense in each foreclosure suit the same questions now raised by plaintiff in error in the attack upon the validity of the assessments. Hence those decrees of Poinsett Chancery Court are res judicata of the very issues raised in the present controversy and are so pleaded.

There should be an end to litigation and hence when a person has had one full opportunity to present his claim or defense, the judgment in that case should and does bar him from maintaining another and different suit and is *res judicata* of the controversy.

No question whatever is made as to the absolute regularity of notice, pleadings, decree and proceedings generally in the several foreclosure cases for delinquent assessments brought by both districts. The drainage district sued for the installment due in 1920 following the assessment which was made in 1919. Roy Rice did not appear, and after due notice a decree was rendered, his lands were sold to the district, reported to the court and approved and deed to the drainage district executed.

The same thing occurred during the successive years for the installments due in 1921, 1922, 1923 and

1924. Thus the drainage district procured five degrees of foreclosure against Roy Rice, or, to be more exact, against the lands in controversy, which were then owned by Roy Rice.

The levee district also procured five decrees of foreclosure against the same lands for its installments beginning with 1921 and it included the decree for 1925.

The owner of the land, Roy Rice, who had the absolute title as early as 1920, could have appeared in any one of these ten foreclosure proceedings in the Chancery Court, and could have set up every matter that he has set up in the present controversy.

There is certainly no need to cite cases to prove that this very subject matter could have been presented in these foreclosure proceedings because the decision of this court in the case of Lee against Road District under which the complaint is filed, was presented in identically that manner. Lee and others were defendants in a foreclosure suit brought for the collection of an assessment of road tax and they appeared and set up that the assessment was void because the improvement was completed while the title to the lands remained in the United States Government. This court heard them as to that defense and held in their favor and canceled the assessment. Hence the Lee case is conclusive and absolute authority to justify Roy Rice in presenting his defense in any one of these ten foreclosure suits. But he did not present these defenses. Instead, although duly served, he made default.

We contend that under the overwhelming weight of authority he should be estopped now to bring an independent suit attacking the assessment. Some of the decisions of the Supreme Court of Arkansas in point are:

Howard Sevier Road Imp. Dist. v. Hunt, 166 Ark. 62.
Tri County Highway Dist. v. Vincennes Bridge Co., 170 Ark. 22.
Gordon v. Clark, 149 Ark. 173.
Shaw v. Polk, 152 Ark. 18.
Taylor v. King, 135 Ark. 43.
Toll v. Toll, 156 Ark. 139.
Mo. Pac. R. R. Co. v. Conway County Bridge Dist., 142 Ark. 1.

Some of the numerous decisions of this court applicable are the following:

City of New Orleans v. Citizens Bank of La., 167 U. S. 371.
Southern Pac. R. R. Co. v. United States, 168 U. S. 1.
City of New Orleans v. Warner, 175 U. S. 120.
Fidelity Nat. Bank v. Swope, 274 U. S. 123.
U. S. Trust Co. v. New Mexico, 183 U. S. 535.
Baldwin v. State of Maryland, 179 U. S. 220.
Cromwell v. County of Sac, 94 U. S. 351.
Bates v. Bode, 245 U. S. 520.

See also:

34 C. J. Sec. 1327 p. 920.
Ib. Sec. 1331 p. 923.

The principle of *res judicata* applies to tax proceedings just as it does to ordinary litigation between individuals.

34 C. J. Sec. 1381 p. 966.
2 Freeman on Judgments, 5th Ed. Sec. 951.
Fidelity Nat. Bank v. Swope, 274 U. S. 123.

And see other cases *supra*.

We therefore contend that the matters set up in the complaint are *res judicata* by reason of the ten foreclosure decrees, five in respect to each district, shown in this record.

POINT H.

Roy Rice, the predecessor in title of plaintiff in error, not only waived his right to claim immunity for his lands under shelter of the government title by signing the petition and activity in annexing his land, but he also became estopped by assuming inconsistent judicial positions. In the first place, through his attorney, he appeared as a petitioner for the annexation of this land to the district, and for the assessment of a tax for the improvements. In the second place he failed to appear in court to contest the original assessment in 1919 of his lands, the reassessment in 1922, and also made default in ten foreclosure proceedings in the chancery court (five for drainage district taxes, five for levee district taxes). His position in the present suit is inconsistent with these previous legal positions and hence he is estopped.

This question is rather closely interlocked with the other elements of estoppel but the general rule as to inconsistent legal positions is as follows:

"It may be laid down as a general rule that a party will not be allowed, in a subsequent judicial proceeding, to take a position in conflict with a position taken by him in a former judicial proceeding where the later position is to the prejudice of the adverse party and the parties and the questions involved are the same."

10 R. C. L. p. 702, Sec. 29.
Ib. p. 698 *et seq.*, Secs. 26, *et seq.*
Ib. p. 723, Sec. 45.

See also:

The Philadelphia, etc., R. R. Co. v. Howard, 13 How. p. 305.
Shutte v. Thompson, 82 U. S. 151.
Daniels v. Tearney, 102 U. S. 415.
Davis v. Wakelee, 156 U. S. 680.
Pierce v. Somerset Ry., 171 U. S. 641.

POINT I.

Roy Rice also should be held estopped because, after inviting the construction of these improvements and the imposition of this tax by the drainage district, he stood by without objection permitting over two million dollars to be expended on the lands which he and his neighbors caused to be annexed to the drainage district, and did not object to the assessment nor to the expenditures until the bulk of the improvements were completed; nor in fact until six months after the rendition of the decision of this honorable court in the case of Lee vs. Osceola Road District, supra.

In the case of

Chadwick v. Kelly, 187 U. S. 540

this court held the plaintiff in error barred for the following among other reasons:

> "The plaintiff in error did not raise such a question in time to stay the work *in limine*. He awaited the completion of the work, and until his property had received the benefits, whatever they were, of the improvement."

In the case of

English v. *Arizona*, 214 U. S. 359,

this honorable court held that English was barred because after appearing before the commissioners and protesting against his assessment for the sole purpose of saving the question for review, he then actively interested himself in the sale of the bonds of the district. The court said, "There is therefore, ground for the contention that such conduct constituted a waiver of all objections to the assessment" (Rec. p. 365).

Under Point C as to waiver, we referred to the elaborate note appended to the case beginning with

Moore v. *Yonkers*, 9 A. L. R. 590.

And as to drainage districts, the cases and notes beginning with

9 A. L. R. p. 835, note 942, 844, 847, 888

As stated before, a very elaborate collection of cases upon these points is contained in this note.

We have previously cited four cases from the Supreme Court of Arkansas beginning with

Rector v. *Board*, 50 Ark. 116,

holding that a property owner may estop himself by acquiescence as well as by activity. It seems to us that the present is a typical case, for Roy Rice did not ob-

ject until his lands were improved, although he had petitioned for the improvement and, having reaped the full benefit of the enormous expenditure of the district, he now seeks to shift the burden to his neighbors. He should be held estopped.

See also 10 R. C. L. p. 723, Sec. 45.

POINT J.

The Act of Congress considered in the case of Pierce vs. Drainage District 17, 41 Stat. at Large Pt. 1 Chap. 47, p. 392, permitting the assessment of "unentered, unreserved public lands and all of those entered lands for which no final certificates have been issued," has no bearing upon this controversy because it was not passed until January 17, 1920, whereas the final certificate of entry to Roy Rice had issued nearly a year previously and the patent itself had issued previously, on June 3, 1919.

All that is necessary to show that this act can have no possible application and could never have affected the lands in controversy is to recite the dates just given.

On page 12 of the brief of plaintiff in error, it sets out in italics a statement that none of these lands were included within that act. Elsewhere in the brief, plaintiff in error claims that the drainage district had apparently overlooked the fact that this statute did not apply to these land when it reassessed in 1922 (Brief of Plaintiff in Error, p. 36). This contention is obviously baseless because the act could not possibly have referred to lands which had been entered and patented about a year before its passage.

The language of plaintiff in error, on page 36, in stating that in 1922 the drainage district was "negligent" in overlooking the fact that this act did not apply is wholly unjustified, because an act affecting lands unentered as late as 1920 could not possibly cover lands for which final certificate had been entered nearly a year previously, or in February 1919. The language of the board's report in 1922 upon the assessment obviously refers to an entirely different territory than the one in controversy. This Act of Congress is copied in brief of plaintiff in error on pages 11 and 12.

POINT K.

We now discuss before concluding the theory of plaintiff in error that a "potential" or "inchoate" lien existed against all the lands within the boundaries of either district upon the creation of the district.

The plaintiff in error has practically abandoned that contention before this court, but it was presented in the Chancery Court and in the Supreme Court of Arkansas, and in fact the Chancellor based his decision upon it. This ingenious theory was that upon the creation of the levee board an "inchoate" or "potential" lien was established against every acre of land embraced within its outside boundaries. That if any land within those boundaries was government land in 1893 that inchoate lien theory attached an immunity to such lands, and that never thereafter could those lands be assessed for levee improvements of the St. Francis Levee District.

The theory also embraced the drainage district and it was argued that when the district was created in 1917 an inchoate or potential lien existed, not only as against the lands embraced within the boundaries of that district, but also against lands which might be added thereto later.

To support this rather unique argument the only authority cited was some general language from Page and Jones on Taxation by Assessment, and the same authority is cited here but without elaboration.

We think this theory so entirely tenuous that the plaintiff in error shows good judgment by not presenting it to this court. However, we wish briefly to refer to it since it was actually the basis of the Chancellor's original decision.

How could a potential or inchoate lien exist in Drainage District 7 as against lands which were not included within its boundaries? How could a potential or inchoate lien exist as to the levee district against lands which were meandered and called "Sunk Lands," "Lakes," or "Unsurveyed Lands" at the time the levee district was created, and for fifteen years or so thereafter, until the government resurveyed the entire area and established new meander lines.

If an inchoate lien existed from the organization of the district, did the lien cover the original levee planned in 1896, or does it cover the levee of 1925 which was six times as large as the original levee? If an inchoate lien applies to Drainage District 7 did it apply for the plans of 1919 or did it apply to the entire changed plans of 1922?

If the inchoate lien theory applies to the drainage district, then we have a very unique situation as to 12,000 additional acres of "Sunk Lands" east of the St. Francis River not embraced in this controversy. At one time it was planned to protect this additional acreage by moving the levee on the east side of the lake further west, plans were formed and the assessment was made and filed, notice was given and at the hearing a very large number of landowners appeared. The drainage district submitted to the landowners present the question of whether a majority desired that the levee be built on the new line and that the assessment be made, or whether they desired that the new plans and the new assessment be abandoned. The majority favored the elimination of those lands both from protection and assessment and the board thereupon in open court withdrew its plans, its assessment books, and this 12,000 acres was left unassessed, outside the levees of the district and unprotected from the St. Francis River (Rec. pp. 55-57). Yet, according to the potential lien theory of plaintiff in error these lands are still subject to some kind of a cloud and if they were government lands not included within the Act of Congress of January, 1920, a suit might be maintained to cancel this inchoate lien. This seems wholly baseless to us.

However, the authorities do not justify any such contention.

> "In the nature of things, no tax or assessment can exist, so as to become a lien or en-

cumbrance upon real estate until the amount thereof is ascertained and determined."

Words & Phrases 2nd Ser. Vol. 3 p. 30.

Citing:

Gillmore v. *Dale* (Utah) 75 Pac. 932.

If there were any such thing as a potential lien it certainly should have been considered by the Supreme Court of Arkansas in a case very similar to the present wherein is considered the Act of Congress of 1920 above referred to, the case of

Pierce v. *D. D.*, 17 Miss. Co., *supra*.

In the Pierce case if the potential lien theory was of any force, there had been a potential lien or cloud on Pierce's title for three years prior to the passage of the Act of Congress of 1920, but the court does not mention it even remotely.

Furthermore, in the case in this court which considered the whole theory of taxation by assessment as due process of law under the Irrigation Act of California, there is no reference to any potential lien dating from the mere formation of any district.

Fallbrook Irrigation Co. v. *Bradley*, 164 U. S. 112.

Plaintiff in error substitutes for his potential lien theory the question that the lands east of the St. Francis River might have been subject to an assessment for the preliminary expenses of the district if the district had failed to undertake the improvements, and cites

Houck v. *Little River Dist.*, 239 U. S. 254.

This case merely upholds the right of a general assembly to fix a flat tax per acre upon lands for the payment of preliminary expense of surveys and the like. There is no reference to any other lien than that fixed by the statute.

The time when drainage and levee liens take effect are matters of statutory regulation and the statute is clear as to both of the districts in the present suit. Upon lands added to the district the assessment of benefits, when confirmed by the court, has the force and effect of a judgment and therefore, of course, becomes a lien from the time the Court confirms it.

C. & M. Dig. of Ark., Sec. 3615.

The annual tax levy is also a lien from the time it is levied by the court.

C. & M. Dig. of Ark., Sec. 3618.

A lien upon the entire revenue of the district to support the bonds is provided by

C. & M. Dig. of Ark., Sec. 3634.

These provisions are contained in the general law of drainage districts, which applies also to the present district. However, in the original Act of 1917 creating the drainage district identical provisions are included in Sections 9, 13 and 28.

As to the levee district the amendatory act applicable provides that the annual tax levy, not exceeding twenty five cents per acre upon the betterments, shall constitute a lien.

Act 272 Sec. 4 Vol. 2 Acts of Ark. 1917, p. 1448.

Conclusion.

As stated in the outset of this brief the question is whether these former "Sunk Lands" shall entirely escape assessment for their entire history on account of the fact that they were once government lands at the time the districts were created. We have shown that the very value of these lands is due to the improvements for which these assessments were levied. Without the improvements the lands would still be "Sunk Lands," wet, overflowed, and worthless. The neighbors of Roy Rice and these other former homesteaders have burdened their lands with a tremendous tax to protect them from floods and to drain them. The tax in the drainage district was invited by Roy Rice and the other persons concerned in this decision and except for their activity they would have been left overflowed but untaxed.

In the Lee case this court suggested that the assessment in question there might hinder the government in the disposal of its homestead lands. Such cannot be the effect in the present case because on account of the physical situation of these lands between the two large drainage districts, they would have remained worthless, whether government lands or individual lands, except for the improvements of these districts, according to the amended plans.

The government by the Act of Congress, permitting the assessment of public lands that remained unentered and unpatented in 1920, expressed its belief

that these drainage improvements were essential and that Act of Congress rendered them liable to the assessment. This is a finding by the lawmaking body of the necessity and importance of this reclamation work to lands similarly situated.

In view of the fact that the Act of Congress was not passed until 1920 it could not apply to the lands in controversy. But certainly it evidences a waiver by the government of the immunity of government lands within the district after 1920. We concede that the Act does not refer to this particular area, but it does refer to areas quite similar in every respect.

Every principle of justice seems to us to indicate that these lands should bear their just proportion of the cost of the reclamation by these two districts.

For all the various reasons shown herein and as set out very clearly by the decision of the Supreme Court of Arkansas, we earnestly contend that the decision of that court is correct and should be affirmed.

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